APPENDIX A-3

Response to Comments and Copies of Letters Received During the DEIS comment Period (June 21 – August 20, 2004)

Summary of Comments and Responses

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General Comments	
The PEIS lacks a clear "goal". By failing to establish a clear subset of lands to be placed into commercial, residential and industrial uses, it assumes that all lands could be considered for development. What then is the relationship between the REMB and the other bureaus within the Trust Land Management Bureau, given the potential that "all lands" could be considered for development? SI, AFTWR, FOTWS	The Trust Land Management Division manages a land portfolio of approximately 5.2 million acres, most of which is being managed for timber, agriculture, or grazing. This management emphasis on natural resources is expected to be dominant for the foreseeable future. Lands suitable for real estate development are linked to economic and demographic factors and as suggested in the DPEIS, will likely remain less than 1% of the total trust land portfolio. The programmatic portion of the funnel filter creates a set of performance standards to create a subset of lands that might be eligible for future development. The Final EIS includes 2 biological filters (grizzly recovery and core bull trout areas) that further define a smaller subset of eligible lands. The Trust Land Management Division will work together in identifying lands that may have development potential for residential, industrial, conservation and commercial uses. The evaluation of real estate opportunities will be undertaken in the context of and with respect to the management goals associated with timber, agriculture and grazing as well as for real estate development. The REMB will not operate in isolation from the other bureaus. See also Sections 1.1.3, 1.1.4, 2.3.1, 2.7, 2.10.
The PEIS should address "an identified and limited universe of Trust assets be considered for development". SI	The PEIS provides a framework and a guide for each land office as they evaluate Trust Lands in regard to their suitability for commercial, industrial, conservation, and residential uses. As noted in the above response, performance measures, such as slope, floodplain, and proximity to infrastructure serve to limit the type of lands that might be suitable for development. The Project Selection process will create a list of potential projects on a 1, 3, and 5 year priority basis. See also sections 1.1.3, 1.1.4, 2.3.1, 2.10
The PEIS lacks quantifiable benchmarks to measure success. SI	The acres of projected development associated with each management alternative provide a reasonable guide to test general conformance or success to a chosen alternative. The monitoring section of the EIS provides a methodology to test compliance with the selected alternative. See also section 4.3.
The PEIS process may benefit from the delay of the final document until the	The Whitefish neighborhood planning process was primarily initiated by DNRC in response to the actions of the county and city to update the City-County growth policy for that area. Under each of the

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Whitefish Trust Land Plan is completed. SI	proposed plan alternatives, DNRC intends to engage with the local planning processes, including the option to pursue neighborhood plans as a means of clarifying management options for trust lands. Each planning situation may be different depending on location and interest by the local community, While the Whitefish planning process may provide a good "case study" for evaluating the role that Trust Lands have in community development, it is not a case that can be universally applied across the state. For example, in the Whitefish area Trust lands are located close to the urban fringe; Rapid residential growth is occurring adjacent to Trust Lands; and Recreation is a key component of the area economy. This is not true for every land office region. The six DNRC land offices vary widely regarding land types and socioeconomic conditions. The PEIS provides a flexible framework for addressing real estate development on Trust Lands that can be applied as appropriate depending on area characteristics. Alternatives C and D provide an emphasis on securing maximum land entitlements, which in most situations would provide community involvement in project decisions. See also sections 2.6.4 , 2.6.6, 2.9.6, 2.9.7
The DNRC should avoid developer driven growth. BF	The identification of lands suitable for projects would be achieved through funnel filtration process as carried out by each local land office. The funnel filtration process, under all alternatives, "provides a systematic approach to identify project level opportunities". All project proposals, regardless of how they may have been identified, would require review and approval through the project selection process. At the project level, the cost of development will be born by the developer, to the greatest extent possible, within the context of meeting requirements under MEPA and local land use policies and regulations. Under Alternative A, the DNRC would rely to a greater extent on the developer to identify projects, whereas under the other alternatives, the REMB staff would have an increasingly greater role in selecting and ranking projects for specific review. The REMB would also be increasingly more active in obtaining the necessary entitlements to direct growth to specific areas in keeping with local land use policy as well as MEPA. See also sections 2.3.1, 2.6, Chapter 5
The PEIS should include a public disclosure and ethics policy in light of the failure to disclose the activities of the DNRC to the public in both the Section 36 project and the Whitefish neighborhood plan. BF	DNRC conducted both processes in a very public fashion, including newspaper notices and dozens of public hearings/meetings. The public involvement and participation process for the Section 36 Neighborhood plan is summarized in the Section 36 EIS, June 2001. The planning process for Whitefish anticipated a year-long effort that was initiated with a public meeting and continues to have public meetings on a weekly basis. DNRC is proposing to have local review on all applicable projects to maximize public involvement in real estate use decisions.

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	See also sections 2.3.1, 2.9.6, 2.9.7, chapter 5
The DPEIS lacks criteria and direction to maximize long term revenue while protecting the environment. SG, AFTWR, FOTWS, MEIC	Long term revenue can be achieved through leasing or selling of land. Market conditions will often determine whether leasing or selling is a preferred revenue strategy. In situations where leasing is not practical, selling may offer the only mechanism to capture land values and generate revenue to the trusts. Money from land sales is held in the permanent trust that generates annual revenue through investment strategies. Environmental impacts would be evaluated with compliance to local land use regulations and MEPA. Alternatives C and D stress improving land entitlements before the sale of any land to improve land values and to identify project outcome objectives. See also sections 2.6.4, 2.6.6, 2.9.5, 2.10
The PEIS falsely assumes that a large percentage of state land will be made available for development regardless of the impact that development will have to communities or the natural environment. SG, MEIC	Section 2.6 of the draft PEIS presents the potential increases in residential, commercial and industrial uses by acre on Trust Lands, between 2003 and 2025. Under Alternative C, the most aggressive alternative, additional acres directed to residential uses would increase by a factor of 0.27% to 0.46% (mid range values) of the total Trust Land acreage. Industrial and commercial uses would increase by a factor of 0.12% to 0.20% of the total Trust Land base. This can be compared to conservation acres which would grow by a factor of 0.47% of the total land base under Alternative C. The programmatic portion of the filter analysis creates a subset of lands (through performance descriptors) that might be eligible after considering such factors as topography, floodplains, critical wildlife habitat, and proximity measurements. See also sections 2.3.1, 2.10, 4.1.3 and Appendix G & H
The PEIS would benefit from the adoption of three overriding principles: A manageable number of state land parcels should be identified for development. The filter process should be limited to identifying only certain lands for consideration. The DNRC should adopt performance standards to assure that revenue to the Trust is increased while impacts to the environment and the community are minimized. SG, MEIC	The draft PEIS has been developed with respect to a set of objectives that in turn provide a management philosophy for the REMB. These objectives are listed on Page E-4 of the draft PEIS. With respect to performance standards, it is the mission of the Trust Land Management Division of DNRC as well as the stated purpose of the PEIS to "assure that revenue to the Trust is increased while impacts to the environment and the community are minimized", (ref: Page 1-2). Alternative D was created to further address these issues. See also sections 2.3.1, 2.6.6, 2.10, 2.11.1
The PEIS should direct the REMB to produce an annual	DNRC publishes an annual report and return on assets report. Monitoring of the selected plan alternative is discussed in Chapter 4

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report (ref. 4.3.1) that measures activities in terms of established criteria. SG, MEIC	of the DPEIS.
Jody Sanford of the Bozeman planning office provided line edits for typographical and technical errors throughout the document.	Technical and typographical edits are incorporated in the final PEIS. Please refer to the corresponding sections of the FEIS..
Funnel Filter Process – General Comments	
Overall, the funnel does not pre-select lands suitable for development. The filters, while well conceived, do not completely eliminate lands from consideration. Rather it is a comparative tool, leaving all lands "at risk from development". In the absence of setting a limit on land development, the REMB will be in a reactive position, responding to proposals and the resulting decisions will be driven by developers and proponents of development. In taking a project by project approach, the REMB will likely waste time on projects that will ultimately be rejected. Without "pre-selection", communities will receive no advance notice of proposed areas of development. SI	It is not the role of the PEIS to pre-select lands for development or to completely eliminate lands from consideration. The PEIS provides a framework for each local land office to identify suitable lands for development. As stated on page E-5, the document states, "It (the PEIS) does not address any specific real estate program or project. It does not address site specific issues nor does it make specific land use allocations. Individual activities of the REMB will be subject to the provisions set forth in MEPA." The identification suitable lands would be achieved through funnel filtration process as carried out by each local land office. Per 2.3 of the PEIS, the funnel filtration process, under all alternatives except A, "provides a systematic approach to identify project level opportunities". At the project level, the cost of development will be born by the developer, to the greatest extent possible, within the context of meeting requirements under MEPA and local land use policies and regulations. Under Alternative A, the DNRC would rely to a greater extent on the developer to identify projects, whereas under the other alternatives, the REMB staff would have an increasingly greater role in selecting and ranking projects for specific review. The REMB would also be increasingly more active in obtaining the necessary entitlements to direct growth to specific areas in keeping with local land use policy as well as MEPA. All project proposals would be subject to the Project Selection process identified in Figure 2.5 and by so-doing would minimize the reactive mode of project opportunities.
The PEIS does not clearly indicate how existing "special uses", such as residential cabin leases, will be addressed under the funnel filter process. SI	The funnel process is primarily a decision-making framework for identifying new land use opportunities or proposed changes to existing uses. The PEIS indicates that existing leased properties would not be sold in most situations (see Section 2.3.1)

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Table 2-19 demonstrates that the funnel filter is too course and focuses on process rather than outcomes. The filter should include "outcome criteria". SG, MEIC	The funnel filter produces an outcome from a series of filters that identify lands suitable for project development. It is not the role of the PEIS to pre-select lands for development or to completely eliminate lands from consideration. The PEIS provides a framework for each local land office to identify suitable lands for development. As stated on page E-5, the document states, "It (the PEIS) does not address any specific real estate program or project. It does not address site specific issues nor does it make specific land use allocations. Individual activities of the REMB will be subject to the provisions set forth in MEPA." The document provides a process and an approach to real estate development. It is not intended to provide specific outcomes. The Objectives of the Plan (Page E-4) provide the overall management philosophy for the REMB as well as the basis for measuring outcomes, and must be addressed as part of any real estate project undertaken by the Bureau. All alternatives achieve outcome objectives as a result of following the filter process that includes project review by local land use authorities. Alternative D was designed to emphasize outcome objectives. See also sections 2.6.6, 2.9.6, 2.9.7, 2.10, 2.11
The funnel filter process is too general and simplistic. Detailed lists of factors and criteria should be identified to evaluate a parcel of Trust land against a particular filter (Figure 2-4) BP	The funnel process is very detailed and comprehensive. The first filter, for example, generally excludes lands for potential development if they are too steep or located within wetlands or within certain types of critical habitat. The regulatory and project filters "pick-up" all the applicable local, state and federal regulations. The MEPA filter is very detailed, requiring environmental review before a state decision. The same could be said for all other filters of the funnel process. The PEIS provides a process that provides each land office with a methodology to perform program responsibilities of the REMB. The six DNRC land offices vary widely regarding land types and socioeconomic conditions. The PEIS provides a flexible framework for addressing real estate development on Trust Lands that can be applied as appropriate depending on area characteristics. See also section 3.3.1, Appendices C, G, H
The presence/absence of important wildlife and fisheries habitat should be a part of the filter process. These alone should stand as criteria for no residential, commercial, or industrial development. FWP, AFTWR, FOTWS	The regulatory filter of the funnel filter process considers local, state, and federal regulations, many of which have some relationship to "important" wildlife and fisheries habitat. In addition, the funnel filter has been amended in the FEIS to consider such biological filters as grizzly bear and bull trout habitats.. Project level proposals will be further evaluated through the MEPA process, which requires consideration of these type of natural features.

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Physical Environment Filter	
The DNRC should use a more accurate digital elevation model (DEM) to determine unsuitable lands. SI	We agree that it will be desirable to use a 30meter digital elevation model cell size (or 10 meter where available) for the project levels of the funnel filter process and associated growth studies. The 90 meter DEM used for this transitional phase of the analysis was derived from the state library's 30 meter DEM statewide composite. This DEM was subsampled to 90 meters for subsequent grid analysis used in the model for layers derived from the digital elevation model, such as slope, weighted distances and simulated floodplain. The 90 meter cell size was used primarily for expediency in processing. For the analysis it was necessary to create dozens of grid layers for each of the six land offices, and a 90 meter grid cell size was more efficient (Nine 30 meter cells equal one 90 meter cell). A second reason for subsampling to 90 meters was to equalize the analysis for all state trust lands across the state. The most accurate DEMs available are from commercial sources such as Space Imaging. DEMs at 10 meter cell size are available for the entire state, but at a cost of $2/square kilometer ($750,000 to purchase the entire state). The 30meter DEMs, originated by USGS 7.5 minute map tiles, are available in the public domain with complete coverage for the state, but approximately one-third of these map tiles are USGS level 1 files with significant internal error in the form of horizontal and vertical striping. The data striping can create effects such as 30 foot linear ridges throughout the quad. Slopes over 25% was the main criteria we used for developable lands, and level 1 data can create erroneous slope values in local areas. Subsampling to 90 meters effectively spreads this error over wider areas and generalizes the striping error.
GIS layers should be used to identify additional disqualifying criteria such as regulatory or political constraints and other environmental characteristics such as availability of water. SI	For a statewide programmatic EIS it is an inefficient use of resources to do the background research, data collection, and geospatial analysis on every individual trust land parcel. It makes sense to narrow the scope of that type of analysis to a smaller subset of lands, determined in the project level of the funnel filter process. The budget required to do this level of analysis for every parcel would be unreasonably large. Fifty six counties and multiple municipalities, each with different political constraints and regulatory environments, along with state and federal regulatory issues makes this type of analysis more appropriate on a small subset of lands determined in the project level analysis. There are also data deficiencies to contend with. Availability of water was mentioned as an example. We did measure proximity to surface hydrology, streams and rivers identified in the National Hydrologic Database as a part of the residential growth analysis. Availability of water from subsurface sources is more problematic. A well log database does exist for Montana and is

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	maintained by the Montana Bureau of Mines and Geology. The data, however, is derived from well log reports and public land survey descriptions. The locational accuracy and completeness of the data varies widely. The well depth also varies, and through it does serve as a rough surrogate for water availability, many other factors are involved such as soils, geology, and hydrologic parameters, and typically involves expert on-site analysis.
No lands found within identified wildlife corridors or linkage zones should be sold or traded for development. FWP	Trust lands cannot be "set aside" by label or otherwise deed restricted in any manner that would reduce the fair market value of land without compensation to the beneficiaries. Lands that have significant resource values can be "preserved" in a variety of ways, including purchase of development rights, purchase of conservation easements, and certain performance standards for development that would mitigate identified impacts. Conservation opportunities on trust lands are not generally restricted by any of the proposed management alternatives provided the trusts are compensated for the lost "rights". See also section 2.3.1, 2.10
Transitional Filter	
The model employed by GeoData Services did not consider travel times to community services such as shopping and hospitals. The model used a straight line distance calculation instead. In addition the analysis in development potential failed to take into account variances in different parts of the state. The model should be weighted according to area characteristics. The Sonoran Institute offers a growth management rating system that would identify appropriate lands for development. (See page 16 of their letter.) SI	The summary statement on page 12 of the Sonoran response is correct, "the model utilized by DNRC attempts to identify those state lands most likely to be developed, but stops short of further identifying the parcels most suitable for development. Ms. Hernandez suggested that further research would be needed to identify a subset of developable state trust lands where negative impacts to air and water quality, wildlife populations, local economies, and communities will be minimal." We are in complete agreement with this statement. The judgment of DNRC planners was that the analysis necessary for a programmatic EIS should include a comparison of all state trust lands in terms of their likelihood of development, and the filtering process is the appropriate process for further identifying parcels most suitable for development. For a statewide programmatic EIS it is an inefficient use of resources to do the background research, data collection, and geospatial statistical analysis on every individual trust land parcel. It makes sense to narrow the scope of that type of analysis to a smaller subset of lands, with detailed predictive analysis of growth in the project level of the funnel filter process. Most residential growth research has involved gravity models and other models that typically work with counties or other relatively large geographic units. Residential growth research involving distance to amenities and distance to services is a relatively recent field of research, and there is a lack of peer reviewed research

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	covering many geographic areas. Combining cadastral parcel databases with census derived demographic analysis is not yet common, partially because of limited data. To our knowledge, Montana is the only state in the Western US with a statewide cadastral ownership layer in standardized digital form for the entire state. In most areas, individual counties, or municipalities each handle private parcel ownership in different ways, some digital, some not. We agree that the two studies we found are probably not indicative of eastern Montana, since they were both conducted in areas with significant topographic relief, adjacent to public lands, with high natural resource amenity values and high population growth. That fact also contributed to the decision to tape a descriptive rather than predictive approach for the transitional stage of the programmatic EIS. The thorough database of attributes is available for subsequent project level of the funnel filter process, supplemented by ancillary data and local research. We agree that for local analysis, growth planning, and geospatial analysis on a finer geographic scale than a programmatic statewide assessment, different methods are appropriate and desired. Travel time analysis, local government jurisdictional policies, historic patterns of land use, air and water quality, wildlife habitat, and many additional factors will be needed for such an analysis. A different methodology is needed for state wide programmatic assessment in the transitional stage of the funnel filter process. As stated in the draft EIS: *The data provided in table @@ shows total acres of state trust land with higher potential to be developed in each DNRC land office. The definition of "higher potential" is a relative term. In this instance it is not the result of a statistical model, but is the lands in the highest class of all state trust lands, by each land office, split into four quantiles, grouped into three classes resulting from summing a series of covariate variables commonly agreed to be related to rural residential development. The data do not reflect or infer causation, they were summarized from variables that have been identified in rural residential development research in Montana as highly correlated. In some instances they may be responsible for growth, but in others they could result from the effects of growth.* The DNRC Planners gave Geodata Services, Inc. two over-riding rules in developing the data development methodology: 1) Consider all DNRC state trust land parcels with a regular and repeatable methodology, using data layers that are consistently available across the state 2) Treat each DNRC Administrative unit as a separate entity

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	We evaluated several methodologies to compare the relative differences in trust land parcels regarding rural residential growth, including Thiessen polygons, travel time zones, sub planning units within DNRC administrative areas such as 6th code watersheds, census blocks and census block groups. Census blocks are the smallest census area, representing the residence of approximately 85 people each, and their shape and size are proportional to where population resides, but in rural situations covering large areas, they are not a desirable unit of analysis for this type of study, since they can include different types of residential development. In addition, census block boundaries split DNRC trust land parcels creating difficulties in assigning part of a parcel to one block and the other part to a different block. Using travel time zones have merit as a unit of analysis with considerable influence on many of the parameters of growth planning. As a unit of analysis DNRC parcels or portions of parcels would be determined by areas inside and outside a drive time of each parcel within a certain threshold. We rejected this approach for methodological reasons for a coarse filter statewide assessment. First, there has not been sufficient fine scale research across the state to determine a consistent drive time threshold. Is their research to justify a 30 minute drive time threshold over a 20 minute or 45 minute drive? Second, the only consistent statewide road layer is at 1:100,000 scale derived originally from Census Tiger files and commercially enhanced. While this digital layer captures federal and state highways and most county roads, many roads in rural areas, high growth areas and private roads are not available, which would render travel time zones derived from roads inconsistent in accuracy. There is also no road attribution except for the highway designation and surface type. Seasonal accessibility and speed limits are also not available. Third, many individual trust land parcels are inaccessible by road and would be excluded from analysis with this method. An alternative method of determining travel time, modifying straight Euclidian distance with weighted distance, using topographic slope as the weighting would create an analysis surface with relative values that would modify distance from the parcel, making it higher in areas crossing steeper slopes emulating travel time. Either method would still require a sphere of influence (or "neighborhood") around each DNRC parcel. In the example provided by Ms. Hernandez in Figure 2, it appears that there are approximately six contiguous polygons encompassing approximately 80 parcels. Using her recommended method, all measured variables would be the same for the multiple trust land parcels inside of each of the six polygons, including all 14 variables measured for Dr Jackson with no influence from travel time, such as housing densities, average year residence

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	built, assessment value, and household growth predictions. Internal variability within these large sinuous polygons would be ignored. Four of the 37 total variables measured in our analysis were directly influenced by drive times. A second major reason we rejected travel time zones was the constraint of considering each land office as a separate entity for analysis. The DNRC Administrative units follow county lines for the most part, with occasional exceptions. These boundaries often do not follow natural features, nor do they adhere to travel influence zones. An area in the Ninemile valley north of Missoula, for instance is administered by the Northwest Land Office, though it is clearly in the Southwest Land Office travel time zone. We also considered grouping trust land parcels into larger groups of contiguous parcels with similar characteristics, then defining neighborhoods or spheres of influence around those. We did include a measure of contiguity in the database, state trust land parcels that were in contiguous blocks were identified for future analysis by dissolving the polygon coverage and determining which resulting parcels were larger than 660 acres (640 acres plus 20 acres to account for section anomalies). Parcels that are contiguous only on one corner, i.e. checkerboard ownership, were not considered contiguous. No matter how parcels are grouped into neighborhoods, all the methods we examined, except Thiessen polygons, involved some level of subjective judgment for grouping trust land parcels. In the final analysis, we selected Thiessen polygons around every trust land parcel as the preferred method. There are weaknesses in this method as well, but it was the method that most fairly assessed all parcels individually, and could make use of available statewide data in an equitable fashion. Use of travel time analysis as a measure of distance to hospitals, airports and shopping centers has merit over Euclidian distance used in the simple additive model. Though we do not agree that travel time areas are as useful for delineating neighborhoods or spheres of influence for all DNRC parcels, we do agree that using drive time for these three variables would increase the accuracy of the comparison of parcels. The differences would be minor overall, since only 3 of the 37 variables we measured would be improved by using this method of analysis, and as suggested, the influence of this type of measurement is primarily important in mountainous terrain. Statewide, we estimate that the effect or redoing these variables would have negligible effect on which trust land parcels would move from one quantile class to another. The Sonoran comment, on page 13 states, “Within neighborhoods, calculations should be independent of area. For example, surrounding housing density should be measured rather than number

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	of households." Any density measurement of housing cannot, by definition be independent of area, since density is defined as the amount per unit size. We measured both count and density for each Thiessen polygon "neighborhood" for each trust parcel to provide data for Dr. Jackson's regression analysis of residential growth. A total count of " residences" was completed for each area. Residences were derived as the central point or centroid of any cadastral land parcel with a residence recorded on it. We also calculated housing density per acre for each parcel and averaging those for all centroids in each Thiessen polygon. Density measures were used in Dr. Jackson's analysis and count was used in the final additive variable used in quantile grouping. Both are available in the database for project level analysis in the funnel filter process, or in alternative quantile groupings with different variables. On the same page of comments (p 13) we agree with the statement that "drivers of growth should be represented as continuous variables rather than categorized into high, medium, and low classes". That is why we maintained all the original continuous variables, in addition to the quantile measurements. For instance, during DNRC planning meetings, we used the CommunityViz software program (A "What if" program to compare alternative scenarios) to compare multiple combinations of variables in descriptive quantiles. The quantiles provide an objective descriptive statistic of relative difference in rural residential growth for the local area surrounding each trust land parcel. The original continuous variables are in the database for predictive modeling of project areas in the steps of the funnel filter process following the transitional lands phase, and they are available in a public domain database and GIS layer for regional and landscape predictive models if agencies or academics are interested in further research in this area. The Sonoran comments (page 15) suggest a random sample of private land parcels should be used to calibrate the model of development potential, growth should be quantified from CAMA records, general linear models developed, and part of the sample should be reserved for model calibration. The essence of this suggestion were accomplished in the analysis for the programmatic EIS. For each Thiessen polygon we derived the following variables for every trust land parcel from the cadastral database, commercial demographic data by block group and ancillary layers. • Average year residence built • Average year residence remodeled • Average effective year for residence • Average Total Land Value for residence • Count of parcels with a residence in each Thiessen polygon

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	• Average housing density/acre based on residence parcel size • Average Total Land Value for commercial parcels • Count of commercial parcels in Thiessen polygon • Average Total Land Value for industrial parcels • Count of industrial parcels in Thiessen polygon • Household difference from 1990 to 2000 • Household difference from 2003 to 2008 • Annual rate – household difference 1990 to 2000 • Annual rate – household difference 2003 to 2008 Jackson used variables similar to some of these in the models reported in Appendix D for growth modeling. We did not see a need to sample the statewide cadastral data, since we had complete data on the entire population, and since by using Thiessen polygons we were covering the entire area of the state with neighborhood assignments. Also, as already stated, the analysis and research required for detailed growth studies is more appropriate in a project level of the funnel filter stage of the process. We do not believe that adequate data exists across the diverse geography of Montana to develop a generalized linear model to predict growth at the parcel level of geography. A process similar to that suggested by Ms. Hernandez was done in the Bitterroot study we examined. They evaluated several model methodologies and assessed model accuracy by holding out 25% of the parcel data. The model with the best fit only increased their predictive capability from 50% to approximately 55%. Other methodology issues factor in to this type of analysis. The cadastral layer and CAMA database include the year the property was built, and an "effective year" providing an adjustment to account for maintenance, upkeep and remodeling. These records are for a single slice in time. The data is not clean, there are a number of records with questionable year of development values, based on a number of factors, such as the assessment method, experience of the assessor, previous records, data entry errors and other factors. Other issues and complexities complicate the use of CAMA for examining land use change. For instance, an older house on site for 70years and then demolished and a new home built would show as a recent development in the year built field. For this study we used mobile homes and dwellings, but left vacant homes and the "other" category out of the analysis. We assumed for the purposes of this study one residence per parcel, when in reality many homes have two residences, converted garages, basement apartments, etc. Apartments are coded in the commercial CAMA database, not the residential. Though CAMA data can serve as a rough surrogate for land use change, at least the landscape pattern of when residences were constructed, they do not track true development patterns and spatial distribution of developments, parcel additions and splits, etc.

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	An annual archive of the complete cadastral layer on a semi-annual basis does show promise for the future for these type of studies.
Rural residential development may not be appropriate anywhere in Montana given the cost of providing services. This type of development is fundamentally unsustainable, fiscally and environmentally, and should be discouraged. (ref: Table 2-6) BP	The REMB will work within the framework of MEPA as well as local land use policies and regulations in evaluating the suitability of sites for residential development. For example, rural lands in close proximity to urban areas may be suitable for development based on their proximity to existing infrastructure and distance to services. Lands that may not be suitable for development due to high costs of services would continue to be managed for historical uses that may include grazing, agriculture, timber, or minerals. Alternative D was designed to clearly define regulatory relationships with local jurisdictions and to identify desired outcome objectives for REMB projects. See also sections 2.6.6, 2.10, 2.11
Market Filter	
Is the "fair share" approach in the best interest of the Trust? Rather, the REMB should consider a more focused analysis of real estate data and "absorption" rates to determine its share of market. Polzin's study failed to relate economic trends in Montana to land markets and real estate values. The MLS and Clark Wheeler data bases should be consulted for information on land sales. SI	Actually Jackson, not Polzin, was responsible for forecasting future land prices. Jackson used Department of Revenue land values. The Department of Revenue (DOR) collects transactions from both MLS (multiple listing real estate sales) and from real estate transactions that were not sold by MLS realtors. It further verifies MLS data and then applies the broader and verified data to all taxable lands in the state using transactions evidence appraisal techniques. Land appraisers such as Mr. Wheeler typically use a few "comparable" transactions in their appraisal work. This study had at its disposable the tax information on all taxable land in the state. The DOR data was used to develop empirical relationships between population, and income at the county level the number of acres in commercial, industrial, and residential uses and the number of acres in the commercial, industrial and residential uses in each county. Mr. Clark Wheeler operates an appraisal and real estate sales business with offices in Bozeman and Missoula. He utilizes both MLS data and proprietary data in making land appraisals. Typically appraisals are on a parcel by parcel basis rather than a mass appraisal study such as this. Mr. Wheeler does not make his proprietary information available to the public. Furthermore it is impossible to determine how much commercial, industrial or residential land of any size is located in any county or land office using either Mr. Wheeler's proprietary data or MLS data. Without the Department of Revenue data, it would be impossible to ascertain recent land ownership patterns much less forecast future ones. Using large amounts of data, variation in land ownership patterns and land prices were first analyzed. These variations were then coupled with projections of population and income to project future

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	land ownership patterns and prices. The analysis was conducted by one of the foremost economists in the region.
The Polzin study fails to analyze non-labor income and it uses per capita income rather than earnings per job in its analysis, therefore misrepresenting how the average working individual is faring. The PEIS should discuss the role of dividends, interest and rent (non labor income) in the growth of personal income in the state. SI	Economic conditions in the DNRC Land Office Regions were analyzed using established procedures and reliable data. Per capita personal income is the most widely used measure of general economic well-being, and was reported for each DNRC Land Office Region. Evidence of the wide acceptance of per capita income is as follows: The U.S. Bureau of Economic Analysis routinely reports per capita personal income for all the spatial areas for which it published data. //niip.wsu.edu (the most wide used regional economic data site in the Northwest) includes analyses of per capita income. BEARFACTS (the standardized regional analysis program of the U.S. Bureau of Economic Analysis) includes a major section concerning per capita income. The regional economic forecasts prepared by Woods and Poole Inc. and the National Planning Association (NPA) include per capita income as an important local indicator. Average earnings per job is not reported or analyzed by any of the above-mentioned standard regional economic sources. Average earnings per job must be calculated from the regional economic data provided by the U.S. Bureau of Economic Analysis. Average earnings per job are not a good measure of how the "average resident" is faring because they explicitly excludes those who do not have a job. Average earnings per job (after correcting for inflation) have been roughly stable in Montana since the mid 1980s. The diverging trends between average real earnings per job (stable) and real per capita income (rising) are explained by the increasing ratio of jobs to population. This ratio has continuously increased in Montana and elsewhere in the nation as a result of a variety of economic and demographic factors, such as the post war baby boom and increased female labor force participation. The Montana trends in the jobs-to-population ration follow the U.S. trends almost exactly. Non-labor income (transfer payments and dividends, interest and rents) does not provide reliable explanations of economic trends in Montana or any DNRC Land Office Region. Non-labor income's share of Montana's total personal income has been stable since the mid 1980s. There was an increase in this share during the late 1970 and early 1980s, but the Montana trends closely parallel those of the U.S. This suggests national factors (such as changes in Social Security legislation and the wider availability of investment vehicles) were the primary cause.

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	When people apply for mortgages, lenders use all income sources as well as savings in making load decisions. Per capita income is perhaps the most common demand variable other than price used in econometric analysis.
Polzin distorts the notion of "basic" industries and does not include services in the basic industry definition, even though services are the fastest growing industry in Montana. SI	The basic industries in each DNRC Land Office Region were identified using the method developed by the U.S. Bureau of Economic Analysis.[1] This method incorporates a combination of industry characteristics and industry analyses to classify each industry into basic and derivative categories. The basic sector identified in this manner has been statistically tested and found to be the major determinant of economic trends in the state of Montana and its major communities. This statistical analysis was replicated for each DNRC Land Office Region, and the same conclusions were reached. Changes in the regions' basic sectors explained changes in the derivative sectors. This is a particularly strong research conclusion because the DNRC Land Office Regions are multi-county administrative areas, not functional economic regions. Non-labor income is not related to economic trends at either the state, county or multi-county regional level. Changes in non-labor income were not significantly correlated to changes the derivative sector for Montana, the state's major communities, or any of the DNRC Land Office Regions.
The PEIS should discuss the role of dividends, interest and rent (non labor income) in the growth of personal income in the state. SI	When people apply for mortgages, lenders use all income sources as well as savings in making load decisions. Per capita income is perhaps the most common demand variable other than price used in econometric analysis
The PEIS should state that conservation of a portion of trust lands will not necessarily lead to reduced rates of return. SI	The economic analysis (Appendix D) suggests that a lower rate of return would be realized if conservation is a priority as described for Alternatives B-1 and C-1. The PEIS envisions the development over several years of at the most about 00.7% of the total trust land management land base. There has never been a proposal to convert massive amounts of land. Many of the reasons that are presented regarding reasons not to develop certain parcels are no doubt true. These site-specific factors are best examined in a project specific environmental analysis.

[1] U.S. Department of Commerce. Bureau of Economic Analysis. 1995. BEA Regional Projections to 2045: Vol. 1. States. Washington, DC: U.S. Government Printing Office.

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DNRC should consider alternative disposition strategies, which could produce better returns to the trust mission. SI	Specific proposals with better returns to the trust would be welcomed. Real estate markets primarily drive rates of return for residential, commercial, industrial, and conservation uses. DNRC will network in various real estate organizations, western states conferences and institutions to be informed and proactive in new ideas and concepts.
Jackson's study of development is limited to a range of one house per acre to one house per 25 acres. His analysis excludes other possible development scenarios such as clusters. SI	The PEIS was concerned with examining how reallocation of state land currently devoted primarily to either agricultural or forest uses might influence the returns to the trust. In doing this analysts examined three kinds of land uses (commercial, residential and industrial). After examining patterns of state land ownership, it was decided to examine the quantity and value of lands which might be referred to as "rural residential". The State does not own a lot of urban land. If these lands are sold or leased, the DNRC does not anticipate limiting the residential use to ownerships in the 1 to 25 acre size range. These lands could be developed at urban densities. The 1 to 25 acre ownership category is one of the most rapidly expanding land uses in many areas of Montana. The values of this land use category are important in helping define rural residential land markets and values. Thus the 1 to 25 acre category was used to help focus the demand for land and its value. It would be inappropriate to sell a large block of land that could be developed for rural residential acreages (1 to 25 acres in size) at a value lower than the market value of the land in its highest use value. That is why the 1 to 25 acre category was used in the analysis. In fact, the Department of Revenue appraises apartment houses as commercial uses. Since we used their definitions of use, we expect residential multifamily development to continue to take place on "commercial lands".
The proportional share of growth approach assumes that the DNRC will always be equally well positioned for development in all of its land office areas (in comparison to private land.) However, it may not always be in the best interest of the TMLD if the returns are not equal in every area. SI	Not all trust lands may be equally positioned in all land office areas for new growth. The funnel filter process will help to define those lands that could be suitable for development. For this and other reasons, some land office areas may have different rates of development and the Project selection process (Figure 2-5) would help to prioritize project opportunities and necessary staff support and budget on a state-wide basis. Revenue generation would be considered in the selection. Tables 2-8 through 2-16 indicate that growth in residential, commercial and industrial uses will be very modest in the Northeastern and Eastern Land Offices. The projected growth in these areas is a function of land location as well as to overall growth, which is expected to be very minimal. However, in areas of higher growth, such as in the region included in Northwestern Land Office,

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	growth in residential, commercial and industrial uses on Trust lands is expected to be higher, based on overall growth patterns in that area of the state and the location of Trust parcels.
Physical Suitability Filter	
Local facility plans should be mentioned in Section 2.3.1.7, page 2-20. BP	Agreed
Financial aspects of infrastructure improvements should be mentioned. The REMB or its developers will be responsible for these improvements, not local communities. BP	The rates of return analyses conclude that improved land entitlements that may require some expenditure by DNRC improve land values and generate a higher rate of return to the trusts. Land valuations are based upon appraisals and if the developer is required to extend all infrastructure to a particular site, then the valuation would be based on the raw value of the land. If the infrastructure is already in place, then the land would be valued as if improved. Regardless, the trusts would be compensated for the actual value of the land. If infrastructure is required, it would be a general policy to require those costs to be borne by the lessee. However, under Alternatives B through D, DNRC may be more proactive in securing improved entitlements to land, which may include extension of infrastructure. This would help market the property and secure a higher return to the trust. See also sections 2.3.1, 2.6, 2.9.7, 2.10
Project Filter	
The remaining filters in the funnel lack an overall philosophy for their application. The Sonoran Institute suggests "guiding principles" for project review, e.g., "anticipated tax revenues associated with development should pay for associated infrastructure". The REMB would also, as a guiding principle, work to avoid, minimize or mitigate environmental impacts and would participate in local land use planning activities. SI	The funnel filter is a guiding principal. It begins with a filter that suggests steep slopes or lands, wetlands and certain types of critical habitat are not generally suitable for most types of developed uses. Another key principal is that all land use proposals will be subject to local land use regulations (zoning, subdivision, annexation) as applicable. All projects would also remain subject to the Montana Environmental Policy Act. All filters provide similar principals that guide the decision-making process for DNRC. See also sections 2.3.1, 2.10
Economic and Community Issues	

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The analysis of impacts is currently based on the Polzin and Jackson studies. These analyses should be re-calculated and the project Trust share of development should be revised accordingly. SI	The studies are accurate fore the assumptions stated in the EIS. Alternative D was designed to provide the necessary flexibility to track actually market growth as opposed to achieving particular acreage goals. See also sections 2.3.1, 2.6, 2.10
The Trust should look at the relationship of its equity to the cost of administration and in relationship to its income (see discussion on page 24-26 of the letter). What is the rationale for calculating rates of return described in this study. SI	The DNRC intends to use a rate of return calculation that is consistent and comparable with the method they currently use in reports to the Montana Legislature. That method shows the earnings from assets as a percentage of the asset value. One of the requirements of this study was that it be consistent with that method so that the DNRC could legitimately report how land development programs would compare with current uses. That is the essential reason that the calculations were made in the manor shown in the study. Typically the rates of return are shown for existing uses thus the term the" experienced rate of return". These calculations are "what if" calculations. What would the experienced rate of return be with reallocation? They were calculated with asset values (the denominator) in the developed use. Had the denominator used the estimated value of land in current uses (grazing, forest and crops) the calculated rates of return would have been considerably higher. They are also conservative in other important regards. The notion of the Department of Revenue values being lagged from current markets was mentioned in another response. In addition, the land values were average values for a land office. In spite of the conservative nature of these estimates, the calculated rates of return are, are considerably higher than agricultural and forest uses. This method is well known in economic theory and analysis. It is also true that the rate of return increases with the level of development. The earnings of the trust fund are a matter of public record as are the income from sales and leases as well as the agency's budget. Further, revenue calculations actually assume a mix of sales versus leases. Some discussion was given to the notion of sales versus leases in the response to an earlier comment. The model also includes the sale of conservation leases.
The PEIS lacks a comparative analysis of different land transactions with regard to their impacts on revenue in the short and long term (lease vs. sale). SI	Some clarification needs to be made between assumptions useful in doing the analysis versus policy. The planning team made some *assumptions* about the mix of real estate sales versus real estate leases. For example, the planning team assumed that land developed for residential uses would more likely be sold than leased. The DNRC is not tied to these assumed proportions. These assumptions were necessary in order to calculate revenue flows. The DNRC is proposing a sale priority in the residential use category and a lease priority in commercial or industrial uses.

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	From a purely financial standpoint it is very difficult, if not impossible, to reach conclusions about whether leases or sales contribute most favorably to the trust fund mission. This difficulty warrants some discussion. Under state policy, leased properties are periodically reappraised to the then (new) market values. Lease values remain effective until the next regular (periodic) appraisal. During periods of comparatively high price inflation, the rapidly dwindling purchasing power of money effectively reduces the actual (real after inflation) earnings from the leased property. When inflation is comparatively low, the costs of inflation to trust earnings are far less consequential. As a result, land sales fare better when there is high inflation and leases provide better returns during low periods of inflation. It is impossible to accurately forecast the rate of inflation over the next 25 or so years.
Polzin uses the Montana Department of Revenue data for real estate valuations. These typically differ from actual market prices. SI	Some of this is covered in the previous comment. However, it is true that the Department of Revenue appraisals are typically lagged behind the real estate market. The same is true where land appraisers use earlier comparable sales and the problem can be rather exacerbated in the kinds of real estate markets like some Montana communities have experienced in the past 18 months or so. Considerable thought was given to adjusting the DOR appraisals for recent market conditions. However there has also been a considerable amount of popular press writing concerning possible real estate market meltdowns. Jackson ultimately decided not to recalibrate DOR prices. The reason is rather simple. State policy makers are concerned with reallocating lands. *Any recalibration of real estate prices would apply to all of the PEIS alternatives. It would increase the rate of return of each and not the ranking of the alternatives.* All of the alternatives are expected to earn considerably higher rates of return than forest or agricultural uses. The choice to not recalibrate suggests that the calculated rates of return are somewhat conservative.
An increase in taxes is cited in the document as a positive result of development on state lands. However, increased taxes are not always adequate to cover the cost of services and infrastructure. SI	Private developers will pay their share of the property tax burden through the beneficial use tax provision of the state's property tax code. In some situations, adding exempt land to the tax roles could be significant to a local community, such as Section 36 in Kalispell. The test of whether development pays its own way is the responsibility of the local reviewing authority. Tax revenues are spent to meet the expanding wants and desires of a growing population. These phenomenons are occurring in many of the growing areas of Montana. Indeed, the purpose of this study is to identify important sources of revenue to meet the growing school budgets in Montana. It is true that the sign of changes in tax revenues is positive. No other value was intended.

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The PEIS does not address the extent to which beneficial use taxes will compensate local governments for services provided. A more detailed analysis is needed regarding the fiscal impact of beneficial use taxes. BP	Beneficial use taxes are derived through the normal property tax appraisal process. What distinguishes beneficial use taxes from regular property taxes is the *taxpayer*. The owner of the property pays property taxes while lessees of exempt property pay beneficial use taxes. Per 3.4.5.1 in the draft EIS, "lessees pay a beneficial use tax on real and personal property used in their trade or business per 15-24-1203, MCA. The REMB works with lessees, the Montana Department of Revenue and local taxing jurisdictions to assure compliance. As a result, local communities benefit from taxes associated with commercial and industrial uses on land that is otherwise exempt from property taxation. In addition, commercial and industrial lessees would to subject to fees and assessments for specific improvements and services. Residential lessees on Trust Lands are subject to personal property taxes on non-permanent residential properties including recreational cabins and trailers. In certain cases, they may also be subject to special assessments for area improvements and services."
With respect to Section 36, it appears that state lands are subject to a different tax appraisal process. The appraisal method in relationship to the taxing of beneficial uses requires additional analysis. There should not "false economic growth" that results in the destabilization of the tax base. BF	State-owned lands are typically exempt from most taxes. However, if state property is put to a beneficial use for commercial or industrial purposes, then the leased property is taxed for the land and improvements in the same fashion as if private.
Developments on state lands are competing with private land owners for federal and state subsidized assistance (for infrastructure, etc.). The state does not pay federal and state taxes, yet they receive these benefits. BF	Private commercial, industrial and residential lessees on state trust lands are subject to local, state and federal taxes on property and income and therefore contribute to various programs that support community and economic development related activities. Development on state trust lands would be subject to the same regulatory rules applicable to private lands, including Impact fees, special improvement district taxes, etc. See also section 2.10
Clarification is needed on how local impact fees will be applied to state lands. BF	In areas where local impact fees are imposed, developers of Trust Lands will be responsible for paying those fees. In addition, developers of Trust Lands will be responsible for paying beneficial use taxes as well as any special fees, bond payments and/ or assessments
Developers on state lands should pay for both on-site	Developers of Trust land will pay for on-site and off-site services as any private land developer would, based on their share of the benefit

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and off-site services. SG, MEIC	as calculated by the taxing authority.
The PEIS does not provide for the development of relationships with local and state efforts in the development of affordable housing and economic development in general. BF	The PEIS does not address any specific type of residential, commercial or industrial development, nor does it exclude any from consideration including affordable housing. As each area land office works with local governments in their area, specific community needs, such as those associated with housing will be considered in planning for uses on Trust lands.
The PEIS does not provide linkages to other proclaimed community goals and associated plans for transportation, affordable housing, economic development, land use and neighborhoods. BF	One of the stated objectives of the PEIS is "to develop ways to work more closely with local government processes and policies" (E-5). In 3.2.6.1 the EIS indicates that the REMB will develop projects with respect to local land use regulation and within the context of local growth policies. Further, in 5.2, the PEIS states that "the REMB of DNRC would comply with all applicable city, county, state, and federal laws. These include local land use regulations. …The items to be addressed and the level of analysis would vary, depending on the nature of the project, its geographic location and the particular economic, social and environmental context in which it occurs. In general, however, the REMB would develop programs and actions in consideration of the goals and policies of the local growth policy as applicable." See also section 2.10
A task force of interested state agencies involved in infrastructure development could assist in developing partnerships and funding sources to achieve community goals in the development of state lands, i.e., affordable housing. SG, MEIC	The DNRC, through the Conservation and Resource Development Division address and fund community water and sewer infrastructure needs. In addition, the DNRC works with other state and federal agencies to address infrastructure needs with respect to a variety of programs and funding sources.
The PEIS should direct the REMB to work with local governments in planning future infrastructure to assure that the DNRC will "pay its own way". (ref: 3.4.4.2) SG, MEIC	As noted in 3.4.4.2, "The REMB intends to evaluate the availability and accessibility of infrastructure as part of the overall project selection funnel process (see Chapter 2). Projects that are designed to take advantage of existing infrastructure capacity are likely to be more feasible. In addition, in those cases where the Bureau works with a developer in preparing a site for a specific use, additional, new infrastructure may be required for project implementation. Generally, it will be the responsibility of the developer and/or the community as a whole to provide the necessary infrastructure."
Section 3.4.5.1 should address the public cost of providing services as part of the income calculation. SG,	Developers of Trust land will pay for on-site and off-site services as any private land developer would, based on their share of the benefit as calculated by the taxing authority

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MEIC	
GIS growth projections should show how land uses in Montana are projected to grow (ref: 4.1.2) SG, MEIC	Many factors affect land use growth predictions. We limited this analysis to residential and commercial growth. Adding all the other jurisdictional issues, and uncertainty of natural resource policies complicate matters, and make it unreasonable to accomplish such predictions for all trust lands at the parcel layer. This type of analysis is more appropriate in the project level of the funnel filter process for a small subset of trust land parcels that will be developed in the future. There are also data deficiencies in doing this on a statewide basis. The first step in such an analysis would be a digital map of surface and subsurface ownership. A surface ownership map of public lands was developed by several federal and state agencies under the leadership of the BLM approximately 10 years ago. Some updates on specific stewardship layers are made annually by NRIS at the Montana State Library but no standardized update is conducted on ownership. Some attempts are underway to correlate and cross check the public ownership map against the cadastral parcel layer maintained by the Department of Administration and Department of Revenue. If and when this is completed, it still will only show ownership, not land use. The second hypothetical step would be to compare different standardized land use maps over time to establish historical differences and make some assumptions about the future. At a coarser geographic scale, counties and DNRC land office areas, land use growth predictions were part of the analysis. Jackson utilized Polzin's forecasts of population and income to forecast growth in land uses.
Table 4-2 does not compare population growth to growth in land used and where that land will be located. The relationship between growth and land use should be more strongly linked. This information, in turn, should be made available to local governments. SG, MEIC	The analysis was performed on a region-wide basis to correspond to DNRC administrative regions. An assumption is made that the growth shown in table 4-2 will occur but the actually location cannot be predicted 20 plus years into the future. The funnel system is a method of defining land suitability through a variety of performance based criteria.
The PEIS falsely states that economic conditions will not be adversely affected by the development of state lands. Inappropriate development could spur sprawl, negatively impact downtowns, destroy viewsheds, etc. (ref. 4.2.1.2)	Under the PEIS, the REMB would work closely with local governments in addressing potential impacts with respect to local land use regulation and growth policies. Each growth policy reflects local values regarding issues such as sprawl, downtown revitalization and aesthetics. Growth policy goals and objectives are realized through the adoption of local programs and ordinances. The *Physical Suitability* Filter and the *Regulation* Filter (2.3.1.7) specifically address such issues as infrastructure and community values that are reflected

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SG, MEIC	through locally adopted growth policies. In addition to local land use policy and regulatory considerations, REMB projects will be subject to evaluation under MEPA and the Montana Antiquities Act. In addition, Alternative D was designed to help achieve desired outcome objectives for development on state trust lands. See also sections 2.6.6, 2.10. 2.11
The notion that Trust Lands would capture a direct proportion of shared local growth is flawed in that id does not address location, which is the single largest factor driving development (ref: 2.3.1.4), BP	Noted. Location is an important factor. The transition lands funnel attempted to define lands that may be highly suitable for development based upon such considerations as location relative to new growth. In addition, the growth projections tend to be highly conservative since the growth estimates are averaged over an entire land office, that often includes both high growth and slow growth counties. The share of development may be localized to a particular growth area in a larger regional setting. A monitoring program is proposed to help test the EIS assumptions and to adjust assumptions and implementation as appropriate. Under Alternatives C and D, in particular, DNRC would be more proactive to adjust project opportunities to those locations with favorable markets and with favorable locational attributes. In some situations, DNRC may buy into growing markets where trust lands are not well positioned. See also sections 2.3 and 2.6
Section 2.6.1.8 states that no jobs would actually be created because the DNRC is sharing in growth, while 2.6.1.8 does address this more correctly. BP	See sections as amended
The development of rural residential uses on state land typically does not pay its own way when it comes to property taxes collected verses the cost of services provided. (ref: 4.2.16, page 4-52) BP	The *Physical Suitability* Filter (2.3.1.7) "considers the proximity and availability of infrastructure to Trust Lands and serves as an added indicator to the suitability of land for future use and development. The relationship of infrastructure to Trust Lands would be a project level evaluation. Conditions of infrastructure availability and/or feasibility to extend can change dramatically as communities grow and expand. The transitional filter considers some elements of "infrastructure" when identifying growth opportunities but detailed evaluations are only possible on a project level basis." DNRC would largely rely on local government review processes to determine the benefit of a particular project to the community.
Costs of government services associated with residential development of state trust lands should be considered. FWP	Noted. All new residential development proposals would be subject to local review and approval. Subdivision review would include consideration of "costs to local services".
The cumulative impacts to broader sectors of the	The purpose identified for state trust land in the Enabling Act of 1889, as amended is "for the support of" the beneficiaries. No other

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economy require examination. For example, the economic analyses of the Thompson/Fisher conservation easement included the economic impacts of development vs. conservation and concluded that the two competing scenarios were essentially equal in terms of overall regional economic activity. However, from an equity or distributive standpoint, it concluded that the main public beneficiaries of development would be a limited number of homeowners, while the beneficiaries of conservation would be several thousand hunters, anglers and outdoor recreationists. FWP	purpose is provided that would broaden the mission of the Trust Lands Division of DNRC. The federal courts have supported this position in Lassen vs. Arizona Highway Department. This very specific purpose limits the ability of the Department and Real Estate Bureau to consider broader social goals or in making secondary economic benefits a primary consideration in developing programs on Montana school trust lands. This is not to infer that the program managers of trust lands do not consider other benefits when looking at specific projects, this is always a consideration and if the additional public benefits do not reduce trust benefits, the alternative with the highest public benefits is chosen. However, basing an alternative on these secondary benefits would not be consistent with the Enabling Act objective of using the trust lands to provide "support" to the beneficiaries.
Evaluate the impacts of real estate development on public recreational opportunities. Many Trust lands provide public access for recreational opportunities including hunting, fishing, and trapping. With the passage of SB 130 and entering into a 10 year agreement with DNRC, FWP has agreed to pay DNRC $2.00/licensee for access to Trust lands for hunting, fishing and trapping. Implicit in that agreement, and explicit in DNRC's rationale for promoting the bill and agreement, the level of opportunity available today (i.e. the quantity and quality of fish, game, recreational opportunity, etc.) is "worth" $2.00 per person. Given	Language in SB 130 recognized that DNRC authorized the public use of state trust land through individual recreational use licenses; and the primary use of state trust lands were for hunting and fishing; and DNRC and DFWP wish to provide a more efficient system for authorizing public recreational use for hunting, fishing and trapping on state trust lands and concurrently provide a greater benefit to the institutional beneficiaries of the trust. As a result of SB 130, a $2.00 fee was added to the Conservation License sold by DFWP as a mechanism to provide a more efficient means to compensate the trusts for the recreational uses of hunting, fishing, and trapping. If trust lands are not managed and considered for development as communities grow, some trust lands will become surrounded by development eliminating hunting and trapping opportunities. As a result the net loss of recreational opportunities would occur whether or not state trust lands are developed or not. Less than 1% of the state trust lands would be converted to commercial, residential or industrial

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that, it is reasonable to argue that if DNRC subdivides or otherwise degrades the quality of the habitat, thus reducing the "value" of use of Trust lands for the uses FWP compensates the Trust, then it is reasonable to expect that recreationists and FWP should not have to pay as much in the future for public access. Conversely, if DNRC takes steps to enhance the quality of hunting or fishing on Trust lands, the "value" could rise. Subdivision and/or development of Trust lands in a way that has adverse impacts on access and wildlife can reduce the income generating potential of those lands through recreation. FWP	uses under any of the proposed alternatives. DNRC estimates that 96% of the 5.2 million acres are available for recreational use.
Natural Resource Issues	
Subdivision and land development are the single greatest threat to fish and wildlife resources. The impacts associated with these developments go far beyond the location of the actual development FWP	The EIS demonstrates that the population of Montana will continue to increase, especially in the central and western portions of the state (see Table 4-1). This growth can be expected to impact fish and wildlife resources to varying degrees and is not limited to just trust lands. The EIS further clarifies how many acres of trust land might be sharing in this expected growth. In all land office regions, the percentage of trust lands to other land ownerships is small (3.1% to 6.2%, Table 2-2) and the percentage that may actually be developed is even smaller. For example, the NWLO is expected to have the highest demand for new growth (see Table 4-2 and 4-3) but the mid range estimate of growth on trust lands is between 2,718 and 13,536 acres through the year 2025, representing less than 4% of the Trust land acreage under the latter situation and less than 0.1% of the total land area in the NWLO. It should also be recognized that almost 63% of the NWLO is in federal ownership which has a high priority for fish and wildlife management. Another factor to consider is that in some situations, trust lands may be more suitable for development than other lands and may actually be beneficial in terms of minimizing sprawl and other detrimental land use patterns. The proposed land selection process (funnel filter) and project selection

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	process are intended to identify lands that have high suitability for development, which includes limiting development of sensitive lands.
The impact of taking lands out of traditional resource use, including the loss of associated public recreational opportunities, and converting them to limited private use should be considered. FWP	As suggested in previous responses, developed real estate uses on trust lands are expected to remain a small percentage of the total trust land portfolio. Impacts to recreation and historical uses would be evaluated on a project level basis.
Reconsider your analysis that concludes that all alternatives would have similar levels of impact on the state fisheries resource. You assume that "developers of residential lands would be required to comply with applicable regulations and requirements pertaining to control of sediment, storm water runoff control during construction of residential properties and use best management practices." A good example of why this is not a safe assumption is the rural residential development on Plum Creek lands in western Montana. This rural residential development has involved large tract sales that are exempt from all but minor subdivision reviews. Individually, these projects may have relatively minor impacts to local water quality, but your DPEIS documents up to 23,000 acres of new rural residential development on DNRC land. Such development may result in clearing of streamside trees and brush that could have severe consequences to fisheries habitat values, but which is	DNRC maintains that the levels of impact would be similar among the alternatives for this programmatic plan. A project level analysis would be required for all actions implemented under this plan. Compliance with best management practices (BMPs) and SMZ rules would apply to all water adjacent projects. No developed uses are suggested for areas located within a floodplain or adjacent to core bull trout streams (section 2.3.1) A project level assessment would be completed on a project by project basis to determine the level of impacts. As part of the MEPA process, public comments would be sought and concerns addressed.

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also exempt from Montana SMZ law. FWP	
Land Use	
The PEIS should adopt the following approach to development: Lands adjacent to urban areas should be developed to urban densities and connected to existing street systems. Rural lands should be developed using clusters, protecting 60% of the land in perpetuity or 90% if the lands contain big game wintering range. SG, MEIC	Suggestion noted. The EIS emphasizes the desire to coordinate land use activities with local government. Subdivision review is appropriate to determine extension of services, alignment of roads, density, mitigation of impacts, and so forth. Clustering is an implementation strategy that would be particularly useful for conserving open space. However, this may be only one tool to accomplish community objectives. Local review of projects and MEPA will help define mitigation strategies related to wildlife and other concerns. Alternative D was designed to achieve desired outcome objectives (see section 2.6.6 and 2.10)
Urban areas should be developed before rural areas and cluster development should be employed in rural areas. (ref: 4.1.2). SG, MEIC	The funnel filtration process provides a methodology for local area land offices to select projects that are the most suitable with respect to community goals and environmental concerns. The appropriateness of developing in the urban fringe or using techniques such as cluster development to conserve open space and/or critical habitat requires a detailed evaluation at the project development level. Such approaches can be employed only in the context of local land use policy and regulatory limitations. Alternative D recognizes cluster development as a desirable outcome objective Section 2.6.6).
The PEIS should direct land area offices to provide assistance and resources to local land use and capital improvements planning in order to expedite the identification of appropriate development of state lands while protecting the community and maximizing revenue generating potential in the long term. This is particularly important for lands that have a high probability of being developed. (Ref: 2.9.4.2, 3.4.4.2,4.2.4 and 4.2.15.2) SG, MEIC	The *Physical Suitability* Filter (2.3.1.7) "considers the proximity and availability of infrastructure to Trust Lands and serves as an added indicator to the suitability of land for future use and development. The relationship of infrastructure to Trust Lands would be a project level evaluation. Conditions of infrastructure availability and/or feasibility to extend can change dramatically as communities grow and expand. The transitional filter considers some elements of "infrastructure" when identifying growth opportunities but detailed evaluations are only possible on a project level basis." Under alternatives B, B-1, C, C-1 and D, the REMB would work more closely with local governments in addressing infrastructure needs. Resources that the REMB is able to bring a discussion about local infrastructure will vary by land office.

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Section 2.9.3.2 (B and B-1) and 2.9.3.3 (C and C-1) should be changed to state that the REMB will not undermine local land use planning goals for short term profit. Aggressive development should not undermine local land use goals and regulations, other community values or the long term ability to generate revenue for the Trust (ref: 2.9.7.3). SG, MEIC	Alternatives B, B-1, C , C-1 and D offer greater opportunities for the REMB to work closely with local governments to achieve better coordination between local land use goals and Trust land projects. Closer relationships with local governments can help make outcomes more predictable while preserving both the community and the Trust's interests. See also sections 2.9.6, 2.9.7, 2.10
The PEIS assumes that zoning is in place in most Montana communities when in fact many cities and towns and most counties do not have zoning regulations. (ref: 2.3.1.5, page 2-9 and section 4.2.5.2 regarding sedimentation) BP	A survey conducted in 1995 by the Montana Department of Commerce for the "Montana Land Use Planners Directory" indicates that most incorporated cities and towns in the state have adopted zoning regulations. In addition many counties have adopted countywide zoning and most have zoning districts that were created by petition. In some situations, DNRC may choose to establish zoning districts on trust lands. See sections as amended.
Regarding TDRs (transfer of development rights), the PEIS text should clarify whether the sending and receiving areas would be in the same land office area. Further TDRs have only been used in a few specialized situations in Montana and require a certain level of staff expertise. Finally, in the absence of zoning in many jurisdictions, it would be difficult to determine the rights themselves. (ref: 2.3.1.5, page 2-10 and 2.3.1.8, Page 2-23, and section 3.2.4.2, page 3-25) BP	In most situations involving TDRs on trust lands, the state land would be a sending area to encourage conservation opportunities. However, some communities may want trust lands to be receiving areas to promote increased density on trust lands that are well positioned for new growth. In some situations, trust lands may be both the sending and receiving areas. In most situations, any use of TDRs would be accomplished in coordination with local governments who have the staff expertise. See sections as amended.
Commercial uses might include residential uses if considered commercial by the Montana Dept. of	For purposes of plan implementation and accounting towards the estimate of potential development, any use classified by the DOR as "commercial" would be counted against the commercial growth estimates. This would include such uses as "apartments", even

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Revenue (ref: 2.3.1.5, page 2-12) BP	though local land use regulations would consider this use to be high density residential.
Residential and commercial categories are also subject to residential and commercial land uses, as well as industrial (ref: 2.3.1.5, page, 2-17) BP	The land use categories attempt to reflect typical zoning designations but due to the acreage projection methodology, land use categories also have some connection to Department of Revenue classifications. See related discussion in Section 2.3.1.2.
Annexation should be added to the list of "entitlements" that the REMB might pursue (section 2.3.1.10, page 2-25 and section 4.2.2.2., page 4-15 and 4-16). BP	The DNRC recognizes that the annexation process must be utilized in order for land to be included within a city or town limits. If the DNRC were developing properties at urban densities near a city or town, it would expect annexation to be included in the entitlement process, along with subdivision and zoning. If a DNRC property were not in a desirable location to be annexed and receive city services, then annexation would not be pursued. See sections as amended.
Land use designations favorable to development should also include growth policy land use designation. BP	Agreed. The DNRC is committed to working with communities as they develop or update their Growth Policies. In the case where communities have land use designations or maps included in the Growth Policy, the DNRC will engage the community to ensure that any land use designation in a Growth Policy is consistent with DNRC goals for the property.
The section on the Relationship to Local Land Use Regulations should include annexation review (ref: Section 2.3.1.12, page 2-26) as should the implementation strategies in Section 2.6.4.5, page 2-48) BP	Annexation is not necessarily a Land Use Regulation. The annexation process generally is limited to the review of an annexation petition and the determination by the city or town that services can be provided to the petitioning tract(s). If a locality has an annexation policy in effect, this would certainly be reviewed by the DNRC in advance of submittal of an annexation petition to determine if the proposed tract(s) conformed to the approved annexation policy. See sections as amended.
The discussion of rural residential is limited to a density of one dwelling unit per 25 acres or greater. Why not address 20, 10 or 5 acres? (ref: section 2.4, page 2-29) BP	See sections as amended.
Section 2.6.2.9 states that the DNRC would follow model subdivision regulations. In the absence of technical assistance at the state level (the CTAP program was eliminated in 2003), there is no one at the state to	Section 76-3-501, MCA requires that" Before July 1, 1974,the governing body of every county, city and town shall adopt and provide for the enforcement and administration of subdivisions". A majority of local governments have used the "Model" as at least the base of their regulations. See section as amended.

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formulate model regulations. BP	
Real estate development should only occur on lands that are adjacent to urban areas where high growth is already occurring. For example most Trust lands within FWP Region 2 (west-central Montana) are located in mountain foothill habitats or riparian areas, which provide very important wildlife habitat, such as critical big game winter range. Permanent residential, commercial or industrial structures and associated activities developed on these Trust lands would adversely affect wildlife populations. FWP	Any division of land to create lease lots on Trust lands would require evaluation through the subdivision review process and through MEPA, among others. Local jurisdictions typically seek comments from FW&Ps on subdivision applications and the MEPA process would seek similar input form FW&Ps. Lands deemed suitable for development will be identified through the funnel filter process and project selection process identified in the DEIS, which includes ample opportunities for public and agency comment and evaluation.
Lands close to urban areas may have greater value as open space to provide corridors for wildlife m movement, protect critical fisheries, protect viewsheds and preserve the quality of life. FWP	This seems almost contrary to the above question. Again, the PEIS provides a screening/filtering process to identify lands most suitable for developed uses. Conservation opportunities through purchase of development rights or conservation easements could be used to protect critical features.
If Trust lands are subdivided (cabin leases, home sites) or sold (for likely development), it is important to minimize possible problems subsequent cabin or homeowners could create in "living with wildlife." It is recommended that DNRC impose development covenants that include actions that: strictly manage potential on-site attractants (garbage, pet food, livestock feed, birdfeeders, etc.), and	This could be considered as appropriate to a particular project. The need for such covenants would typically be identified through the project review process.

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keep pets under control from harassing wildlife. (Please contact FWP for possible wording of such covenants.) FWP	
Conservation	
The PEIS assumes that conservation uses will result in a lower financial return to the Trust. This may not always be true. Conservation strategies should be expanded to include cluster developments, which would not result in a reduced return and conservation as a compatible use with ongoing timber and grazing activities. (ref: 2.9.5.3 and 2.9.5.5) SI, SG, MEIC	Compensation at full market value for lost development rights could provide a good income stream to the trusts. The appropriateness of using techniques such as cluster development to conserve open space and/or critical habitat require a detailed evaluation at the project development level. Such approaches can be employed only in the context of local land use policy and regulatory limitations.
While the PEIS does not discourage conservation under any of the alternatives, it does not direct the REMB to consider conservation development alternatives and benefits as well as other long term economic benefits to the community. SG, MEIC	The purpose identified for state trust land in the Enabling Act of 1889, as amended is "for the support of" the beneficiaries. No other purpose is provided that would broaden the mission of the Trust Lands Division of DNRC. The federal courts have supported this position in Lassen vs. Arizona Highway Department. This very specific purpose limits the ability of the Department and Real Estate Bureau to consider broader social goals or in making secondary economic benefits a primary consideration in developing programs on Montana school trust lands. This is not to infer that the program managers of trust lands do not consider other benefits when looking at specific projects, this is always a consideration and if the additional public benefits do not reduce trust benefits, the alternative with the highest public benefits is chosen. However, basing an alternative on these secondary benefits would not be consistent with the Enabling Act objective of using the trust lands to provide "support" to the beneficiaries.
There may be trust lands that are deserving of conservation but do not qualify for conservation under B-1 or C-1 (1/2 mile or 1 mile from existing conservation lands). For example, a section Trust Land northwest of Missoula	None of the alternatives limit the number of conservation uses that may occur on Trust lands. The distances from existing conservation lands are only used to calculated the *projected* number of acres of Trust lands that could be placed in conservation under a particular alternative. See related discussion in Section 2.3.1.

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provides core habitat for salamanders and frogs an d a refuge for deer, elk and turkey, with a significant diversity of native plants. The site is ideal for outdoor education and has been described as the "only intact forest land in this drainage". JB	
Consider placing conservation easements on certain lands that would protect the properties from further development or limit the development allowed. FWP	DNRC would allow the purchase of development rights with proper legislative authority.
The descriptions of impacts to conservation lands among the alternatives are somewhat confusing. Although Alternative A appears to be the least aggressive approach to developing Trust lands, it also lists the fewest acres of Trust lands adjacent to conservation areas. Alternatives B, B1, C and C1 more aggressively pursue development of Trust lands for increases in revenue to the Trust; however, they also have the highest acres of conservation areas since they consider lands within ½ to 1 mile from Trust lands. FWP	This is an accurate conclusion.
Environmental Impacts	
The PEIS states that the DNRC will be participating in development that would normally occur and that associated impacts will occur regardless of DNRC's involvement. This	The DNRC recognizes that the development of any greenfield property eliminates open space and this loss of open space may adversely affect the reason that some people moved to the community. The PEIS recognized this fact and specifically mentioned conservation uses as uses that could be allowed under any Alternative, but had special emphasis in Alternatives B-1 and C-1. Additionally, if a community is concerned about the loss of open

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assumption does not reflect the significant influence that DNRC may have in certain communities. The elimination of open space, for example, might negatively affect the ability of a community to develop its tourism and recreation economy. In other cases, development on the periphery of a community could negatively affect the downtown. SI	space, it cannot rely upon Trust Lands to provide open space. The community must develop comprehensive regulations that affect all properties to accomplish the goal of preserving open space. Development on the periphery of a community may negatively affect the downtown, however, it can have a positive effect by diversifying the types of businesses in a community and thereby attracting more customers. The effect on downtown is determined, in part, by how the effected businesses respond to the challenge of development on the periphery. The PEIS focuses on how to help fund education in Montana. Montana received land to be managed in trust for the common schools, higher education and other state institutions. Trust management represents a solemn fiduciary responsibility. Neither the Swanson study nor the Rasker/Alexander study cited in this comment are particularly suited to forecasting land markets in Montana. Both acknowledge that areas with high amenities are growing. This growth will occur whether or not the state develops any of its land. Past growth has occurred with the DNRC playing only a minor role in development. If the State doesn't develop land there can be more leapfrog development and sprawl. State lands can actually help mitigate these problems.
The relationship of the HCP to the PEIS is too speculative at this time. AFTWR, FOTWS	It is assumed that real estate activities on lands located within the HCP would be subject to provisions of the HCP. The relationship of the two plans is described in Section 3.2.6.
The PEIS should be amended to say: "the location and design of development on school trust lands will determine the type and amount of adverse and cumulative impact that the development will have. REMB shall seek to minimize any adverse and cumulative impacts through the criteria above and locating and designing development appropriately", rather than saying that the impacts would occur regardless of state lands development. (ref: 2.9.2) SG, MEIC	We generally concur with this statement. A major assumption of the alternatives is that DNRC will "capture" development that would occur anyway based on projected growth and economic indices. The purpose of the funnel filter process and project selection process is to identify lands that are suitable for a particular use at a particular location based upon a multitude of project considerations. Through these processes, adverse impacts should be minimized.

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The development of state lands will be growth-inducing and the PEIS should direct the REMB to determine where the growth will occur and how it will be designed. (re: 4.2.1., B and C) SG, MEIC	The PEIS is careful to state that growth will continue to occur in Montana and it further attempts to predict the general locations of new growth. An underlying assumption to the PEIS is that Trust Lands would share, to varying degrees, some of that anticipated growth. To that end, DNRC would not be actively marketing lands to attract development that would not otherwise have an interest in Montana. The REMB will work within the context of local land use regulations and policies that address the impacts of growth and where growth will occur within that community. In addition, under MEPA, the REMB will address specific impacts related to growth that are not addressed by local regulations and policies. See also 2.9.6, 2.9.7, 2.10, Chapter 5
Cumulative impacts will depend on the location and design of the development (ref: 4.2.1.2) SG, MEIC	Project level review will help define cumulative impacts of a particular proposal. Refer to Chapter 5, in particular
The PEIS should address the anticipated cumulative impacts on water and sanitation and develop means for mitigating those impacts. SG, MEIC	Growth policies (76-2-601(b) & (c) require local governments to describe an inventory of natural resources and local services. In addition, every growth policy must make project trends for each of these resources. All subdivision regulations must contain at least the minimum standards established by DEQ {76-3-504(6)(c)}. All subdivisions are also reviewed by DEQ. The DNRC will do a MEPA analysis, which must take into account the effects on water and sanitation. There are 4 opportunities for the local governments and the public to address the cumulative effects on water and sanitation. Mitigation should address individual situations. See section 5.2.1
The statement that development on trust lands is expected to have negligible economic, environmental and social impacts….is flawed and should be eliminated from the document. It does not address locational factors such as leap frog development that could have a greater impact than development within an urban center. BP	The impacts that development of Trust Lands will, in part, be related to their location and the proximity of services and infrastructure to the tract(s). The Funnel Filter process has a Physical Suitability Filter that will direct the filter process to tracts that have available infrastructure and a desirable location. However, if Trust Lands are not developed, adjacent properties could be developed and the impacts would essentially be the same to the community as if the Trust Land were developed. Refer also to the comments submitted by Cascade County
In various sections, the PEIS states that the alternatives would not create a demand	The development of Trust Lands will have an effect on adjoining properties, however, the extent of the impact would depend upon the location of services in relation to the Trust Land and other

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for conversion of current lands to commercial, industrial, residential or conservation uses. However the development of state lands could impact the type, location and timing. BP	private parcels. The development of Trust Lands would tend to have the most impact if it were extending services to an area that did not previously have them. Conversely, Trust Land could inhibit growth by not developing property that is adjacent to services and make extensions to other properties more costly, if not unfeasible.
Where they exist, local zoning regulations do not always address noxious weeds, barking dogs, etc. Many communities do not have noise ordinances. Barking dogs can be a significant source of noise in residential areas. BP	The DNRC recognizes that noxious weeds are typically regulated during the subdivision review process, as opposed to within zoning regulations. If Trust Land were divided, it would be subject to the same review and regulation of noxious weeds that are required of private lands. Also, the DNRC recognizes that a community, through the adoption of a noise ordinance, can deal with barking dogs and other noise issues. DNRC will rely on local land use regulations to address these issues as appropriate.
Sections 4.2.12.2 and 4.2.12.3 regarding noise levels appear to conflict. BP	See section as amended
Aesthetics are important in both urban and rural areas (ref: 4.2.13.12, page 4-43) BP	See section as amended
How will the state discourage sprawl and mitigate the negative impacts of sprawl? (4.2.13.3, page 4-45) BP, AFTWR, FOTWS	Under the PEIS, the REMB would work closely with local governments in addressing potential impacts associated with growth with respect to local land use regulation and growth policies. Growth policy goals and objectives are realized through the adoption of local programs and ordinances. The *Physical Suitability* Filter and the *Regulation* Filter (2.3.1.7) specifically address such issues as sprawl. See also sections 2.9.5, 2.9.7, 2.10
Methods of mitigation covering commercial and industrial developments within areas already heavily developed and mitigation that addresses impacts across broader rural landscapes. FWP, AFWR	The mitigation strategies for development on trust lands is relying upon local land use regulatory review and MEPA. Some lands are excluded from consideration early on in the funnel process based on physical and biological constraints and existing or pending rules related to the SFLMP or HCP. See also sections 2.3.1, 2.10, 3.2.6
Federal and state laws do not guarantee that legal impacts are always acceptable impacts. Potential residual adverse effects on fish and wildlife should be closely examined. FWP	DNRC recognizes that acceptable impacts are not always the same as legal impacts, and frequently acceptable levels of impacts are lower than the thresholds set by legal statue. Recognizing that acceptable impacts are ultimately set by the agency, interdisciplinary teams attempt to establish tolerable thresholds of impacts at the project level. All projects implemented within the scope of this program would continue to have individual project level analysis that satisfies MEPA

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	and sets acceptable levels of impacts.
The DEIS does not adequately address impacts to the natural environment. AFTWR, FOTWS	This is a programmatic plan that provides a systematic process for identifying defining potential project opportunities. The plan does not make specific land use allocations or identify specific projects. The funnel filter process considers a vast array of information that leads to a conclusion as to lands that might be suitable for development, primarily by identifying lands that are not suitable for development. Specific project opportunities are eventually identified as 1, 3, and 5 year project lists. These projects are then further evaluated through local land use regulations and through the MEPA process. Site specific impacts can then be evaluated in detail and their relationships to the natural environment. See also sections 1.1.4, 2.3.1, 2.10, chapter 5
MEPA Related Issues	
State Trust Land developments should be in compliance with local plans and MEPA. SG, MEIC	The PEIS calls for the REMB to develop its programs and projects with respect to local land use regulations and policies as well as MEPA. See also sections 2.9.7 and 2.10
The PEIS should clear up contradictory statements regarding the use of exemptions (ref: 2.9.2.1 -3 and 5.2). SG, MEIC	Section 5.2 accurately reflects the relationship of local government review and application of MEPA. In general terms, the EIS demonstrates that many of the requirements of MEPA can be satisfied through local review of projects and duplication of process is not intended. In all instances, a MEPA analysis will be performed for each action, but the level of analysis will depend on the scope of project review conducted at the local level. See sections as amended.
Table 2-19 should be changed to make it clear that the REMB will not seek exemptions from MEPA and local land use regulations. SG, MEIC	Under this PEIS, the REMB intends to meet all local land use regulations and MEPA requirements and will waive its right of exemption under MCA 76-2-402 and MCA 73-3-205 (2). (ref: 5.2, 2.97, 2.10)
Section 4.2.1.5 falsely states that short and long term productivity are identical. SG, MEIC	It states that it is “not applicable”.
Section 2.3.1.12, page 2-27, conflicts with 2.9.2.2, regarding cultural resources. The first section indicates that cultural resource assessments would only be	It is the intention of the REMB under this PEIS to comply with MEPA and the Montana Antiquities Act. The requirements under these two Acts may be addressed, in whole or in part by local land use regulations. In cases where local land use regulations to not fully address the REMB’s responsibilities under MEPA or the Montana Antiquities Act, the REMB will follow state requirements.

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undertaken under the Montana Antiquities Act and MEPA if the local government did not require them. The second section indicates these assessment would be taken regardless of the local regulations. Which policy is correct? We would prefer the latter. BP	See sections as amended.
Whenever local regulations are identified for their ability to address MEPA requirements, the text should refer to subdivision regulations as many communities do not have zoning regulations. BP	Local regulations could apply to subdivisions, zoning, floodplain, annexation, building permits and others. Required elements of MEPA could be addressed by multiple local regulations.
In Sections 2.9.4.2, 2.9.4.3 and 2.9.7.3, the PEIS indicates that the department would work with local governments to facilitate a more simplified review. This contradicts the reliance that REMB will have on local land use planning regulations in meeting its MEPA requirements. The state needs to commit to following local policies or not. BP	Alternatives B, B-1, C and C-1 call for a closer working relationship with local government than under the existing condition (Alternative A). Closer working relationships with local governments will enable the REMB to more easily identify lands that are suitable for development. By being involved in local land use planning, the REMB will be better versed in the specific requirements and review criteria imposed by local planning regulations and will be able to design projects that are more responsive to those specific regulatory issues. In doing, so, they REMB will avoid approval delays. The REMB is, under this PEIS, committed to working with local governments to facilitate the granting of favorable land use entitlements. However, while the REMB may seek improved entitlements for its lands, it is the intent of the REMB to participate in and follow local land use regulatory processes. See sections as amended.
Regarding public involvement requirements under MEPA, it should be noted that many zoning reviews and first minor subdivisions from a tract of record do not have public hearing requirements. How will the state provide public involvement in cases where none is required locally.(ref: 2.9.6, page 2-58 and Table 5-1 – Item #1, Page 5-9). BP	The DNRC recognizes that first minor subdivisions from a tract of record do not require a public hearing. However, pursuant to House Bill 94, which modified MCA 2-3-103 and was adopted by the 2003 Legislature, when the subdivision is on the agenda of the Planning Board or Governing Body for action, they must allow for Public Comment on any item on their agenda. The initiation, adoption or changing of zoning districts or the other zoning actions do require public hearings (see MCA 76-2-106; 76-2-205; 76-2-225; 76-2-303 and 76-2-325). A ministerial staff review of a site plan, for example, does not require a public hearing. However, pursuant to HB 94 and MCA 2-3-103, any meeting in which an official action is taken by any local government or its subdivision

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	must include the allowance for public comment on any agenda item. For example, a Design Review Board would have to allow public comment at one its meetings on a project under its purview. See sections as amended.
Regarding Table 5-3, Items 4-8, page 5-10, the level to which growth policies address natural resources is at the full discretion of the governing body. Further an environmental assessment is not required for the first minor subdivision from a tract of record and an EA is not required for subdivisions that are in an area with an adopted growth policy, zoning regulations and an infrastructure improvement plan. If no EA is required, how will the state provide information to address geology, soils, air and water quality, vegetation, and habitat. BP	The DNRC recognizes that 76-1-601 was modified by the Legislature to allow the local Governing Body latitude in the depth that it addresses certain elements in a Growth Policy. The existing conditions and projected trends of Natural Resources are elements in which the Governing Body has latitude. Additionally, it is recognized that the first minor subdivision from a tract of record is exempt from conducting an EA. Additionally, the Governing Body and Planning Board have the ability to waive an EA in certain circumstances (see MCA 76-3-210). Regardless, the required MEPA process will satisfy information regarding these elements.
(Ref: Table 5-3, Items 11 and 12, page 5-11) Overall, growth policies and land use regulations do not typically address natural resources and aesthetics. BP	76-1-601(3)(b)(vii), MCA requires growth policies to address current natural resource conditions. 76-1-601-(3)(b)(vi), MCA requires projected trends for natural resources. 76-3-501, MCA - Local subdivision regulations. (1) Before July 1, 1974, the governing body of every county, city, and town shall adopt and provide for the enforcement and administration of subdivision regulations reasonably providing for the orderly development of their jurisdictional areas; for the coordination of roads within subdivided land with other roads, both existing and planned; for the dedication of land for roadways and for public utility easements; for the improvement of roads; for the provision of adequate open spaces for travel, light, air, and recreation; for the provision of adequate transportation, water, and drainage; subject to the provisions of 76-3-511, for the regulation of sanitary facilities; for the avoidance or minimization of congestion; and for the avoidance of subdivision which would involve unnecessary environmental degradation and the avoidance of danger of injury to health, safety, or welfare by reason of natural hazard or the lack of water, drainage, access, transportation, or other public services or would necessitate an excessive expenditure of public funds for the supply of such services. 76-3-504. Subdivision regulations -- contents. (1) The subdivision

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	regulations adopted under this chapter must, at a minimum: (a) except as provided in 76-3-210, 76-3-509, or 76-3-609(3), require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603; (d) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development and prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques; (e) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body; (f) prescribe standards for: (i) the design and arrangement of lots, streets, and roads; (ii) grading and drainage; (iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that, at a minimum, meet the regulations adopted by the department of environmental quality under 76-4-104; (iv) the location and installation of utilities; (g) provide procedures for the administration of the park and open-space requirements of this chapter; County zoning - 76-2-203. Criteria and guidelines for zoning regulations. (1) Zoning regulations must be: (a) made in accordance with the growth policy or a master plan, as provided for in 76-2-201(2); and (b) designed to: (i) lessen congestion in the streets; (ii) secure safety from fire, panic, and other dangers; (iii) promote public health and general welfare; (iv) provide adequate light and air; (v) prevent the overcrowding of land; (vi) avoid undue concentration of population; and (vii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. (2) Zoning regulations must be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area. (3) Zoning regulations must, as nearly as possible, be made compatible with the zoning ordinances of the municipality within the jurisdictional area. Municipal Zoning - 76-2-304. Purposes of zoning. (1) Zoning regulations must be: (b) designed to:

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	(i) lessen congestion in the streets; (ii) secure safety from fire, panic, and other dangers; (iii) promote health and the general welfare; (iv) provide adequate light and air; (v) prevent the overcrowding of land; (vi) avoid undue concentration of population; and (vii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. (2) Zoning regulations must be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the municipality. (3) Until October 1, 2006, zoning regulations may be adopted or revised in accordance with a master plan that was adopted pursuant to Title 76, chapter 1, before October 1, 1999.
Regarding items 16 -17 in table5-4, Page 5-12, typically local land use regulations do not address issues related to employment – quantity and distribution or related to the state and local tax base and revenues. How will the state provide this information? BP	DNRC recognizes that local land regulations have a small effect in reviewing the Quality and Distribution of Employment and Local Tax Base and Revenues. However, local decisions regarding allowable land uses on parcels do have a direct effect on local tax revenues. For example, if local governments provide for and encourage commercial and industrial zoning and developments they will gain revenue versus having the tracts being developed as low-to mid level residential. This is because commercial tends to be a net revenue generator. Also, the adopted Growth Policy should look at the overall economic conditions and local services, as well as projected trends in both elements (see MCA 76-1-601). The Growth Policy provides an overall framework for the community. Some goals and policies in the Growth Policy relating to economic conditions and local services may be implement, in part, through land use regulations, including both zoning and subdivision. Zoning will set the allowable uses for the land and if conditions are permitted, some mitigation of external impacts allowed. In subdivision review, conditions can be placed on a development to allow its adverse impacts to be mitigated as long as there is a rational nexus between the conditions and the project.
Not all zoning reviews require public notification and opportunities to comment. (ref: Table 5-4, Item17, page 5-12). BP	The initiation, adoption or changing of zoning districts or the other zoning actions do require public hearings (see MCA 76-2-106; 76-2-205; 76-2-225; 76-2-303 and 76-2-325). A ministerial staff review of a site plan, for example, does not require a public hearing. However, pursuant to House Bill 94 which was adopted by the 2003 Legislature and amended MCA 2-3-103, any meeting in which an official action is taken by any local government or its subdivision must include the allowance for Public Comment on any agenda item. For example, a Design Review Board would have to allow public comment at one its

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	meetings on a project under its purview.
Under the PEIS, the state would be relying entirely too much on local government to collect information required for MEPA review. Most local regulatory processes are not going to provide this information. BP	The MEPA process would involve collecting information from all available sources, including but not limited to existing local government information. See above comments for what local governments must have in their information.
Revenue Considerations	
Long-term revenue generation – land kept in public trust would theoretically generate revenue forever, while the money obtained from land sales may or may not continue to generate revenue depending on the success or failure of various investment options. A long-term economic projection that looks at the long-term income potential of the various alternatives, including the "Minimal/Passive" and "Long-Term Resource Management and Conservation" alternatives would be beneficial. FWP, AFTWR, SWC, FOTWS	There is no guarantee that lands kept in public trust would "generate revenue forever." Changing social policies at the local, state or federal level could make it impossible or very difficult to utilize the land to provide support to the different trusts as required by the Enabling Act of 1889. The DNRC often has difficulty utilizing lands in their "best" use due to location or to local citizens or local government trying to place restrictions on their use. It is true that the liquidation of the lands and placing the revenue in to an investment trust does carry with it some risk of poor management reducing the principle value of the investment. For this reason, public trusts are nearly always required to invest in those kinds of securities which minimize this type of risk. Trusts have existed in this country for over 100 years and have prospered under careful management. There is no reason to suppose that the beneficiaries investment trusts will be more likely to fail than there is reason to suppose that governmentally imposed restrictions will not effectively foreclose the ability of the lands to directly provide support for the trusts. Clearly, the trust managers are better able to control the risk of losing asset earning power in investment trusts where they can invest conservatively than in the case of lands that are subject to interventions over which they have no control.
The Alternatives	
Another alternative should be considered with the following elements: A clear, measurable goal that accomplishes the agency's mission should be established. The Physical, Transitional and Market filters should be	DNRC is the agency responsible for managing school trust lands for the purpose of generating revenue to the trust beneficiaries. This is being accomplished by the TLMD of DNRC under the guidance of four Bureaus with distinct land use objectives. The mission of the agency is not distinct to a particular Bureau but to the entire TLMD. The resulting portfolio of agriculture, grazing, timber, minerals, and real estate are intended to achieve a common goal in support of the schools of Montana. The Real Estate Bureau under all alternatives would manage less than 1% of the total trust land acreage in

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used to identify a limited set of lands for development while removing others from consideration. The project level filters should be employed using a set of guiding principles. Criteria for choosing among development strategies should be identified. There should be a methodology for monitoring and evaluation. SI, AFTWR, FOTWS	developed uses but these uses contribute proportionally higher rates of return than agriculture, grazing, and timber uses. So from a portfolio management perspective, it would be prudent and obligatory to seek opportunities for increased revenue to the trusts through various real estate activities. All land use decisions would also be evaluated against environmental concerns through local government review and MEPA compliance. The first 3 filter processes are intended to identify those lands that may have some suitability for developed uses at a programmatic level. These lands are evaluated with additional filters at a project level to define site-specific opportunities. The initial filters related to "transition" and "market" reflect a static situation that can change over the next 21 years of the plan. The market today is not likely to be the market in 10 years and the proximity relationships applicable to the transition filter change as developed uses move closer to state lands. For this and other reasons, this programmatic plan is not intended to predict specific land parcels that may be subject to future development opportunities. The filter model can only help to identify land use characteristics that may or may not be favorable for future development. A monitoring program is proposed to help identify changing assumptions, market trends, ect, that may occur over the life of the plan. Each project filter has guiding principles as described in the DEIS. The first filter, for example, considers steep slopes and wetlands. The project filter considers zoning, annexation, subdivision review, etc. The MEPA filter has specific rules as guiding principals. Guiding principals can be described for each filter. Development strategies must remain flexible to fit unique situations of a particular project. This is a programmatic plan, not a project level activity. TDRs, clustering, PDRs, etc all could have roles in helping to achieve desired project objectives. The preferred type of implementation strategy can only be selected at a project level evaluation. Implementation of the Programmatic plan and monitoring is described in the EIS. Section 2.4 discusses implementation of the preferred alternative and Section 4.3 discusses how the plan will be monitored.
Alternative B-1 is most attractive because it would create the revenue, time and impetus for the REMB to work with local governments to plan for future growth.	All alternatives anticipate working relationships with local governments, including project level approvals. The level of anticipated coordination/cooperation actually increases from Alternative A to Alternative D. The highest revenues and rates of return to the trusts are associated with Alternative C.

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SG, MEIC	
Alternative B-1 with a clear set of development criteria should be the preferred alternative. SG, MEIC	This opinion is noted.
Alternative C should be selected because it is more proactive in planning and achieves improved rates of return. CC, GR	Noted. Alternatives B, C, and D would satisfy the intent to be proactive, be actively involved in the local review process, and achieve higher rates of return. Alternative D would achieve a closer link to community planning efforts. See also sections 2.6, 2.9, 2.10, 2.11
The range of alternatives should include a "no increased development" option to more fully document cumulative impacts.. This would enable the DNRC to document how the new plan will meet the mission of the DNRC to "manage trust land resources to produce revenues for the trust beneficiaries while considering environmental factors and protecting the future income-generating capacity of the land." FWP	The No Action alternative is continuation of the existing program philosophy of the Real Estate management Bureau. This anticipates continued involvement with real estate activities that tend to generate substantially higher returns than traditional resource based uses. It would be irresponsible to the trust beneficiaries for DNRC not to respond to increased revenue opportunities from residential, commercial, and industrial uses.
Reconsider evaluating an alternative that focuses on wildlife and fisheries habitat and open space as priorities. Such an alternative would recognize the significant contribution that public lands, including Trust lands, make in generating revenues from hunting, fishing, and tourism money that benefits Montana's overall economy. Trust lands can and do generate direct revenue from these sources and the PEIS would benefit by fully exploring this type of alternative. FWP	The purpose identified for state trust land in the Enabling Act of 1889, as amended is "for the support of" the beneficiaries. No other purpose is provided that would broaden the mission of the Trust Lands Division of DNRC. The federal courts have supported this position in Lassen vs. Arizona Highway Department. This very specific purpose limits the ability of the Department and Real Estate Bureau to consider broader social goals or in making secondary economic benefits a primary consideration in developing programs on Montana school trust lands. This is not to infer that the program managers of trust lands do not consider other benefits when looking at specific projects, this is always a consideration and if the additional public benefits do not reduce trust benefits, the alternative with the highest public benefits is chosen. However, basing an alternative on these secondary benefits would not be consistent with the Enabling Act objective of using the trust lands to provide "support" to the beneficiaries. See also section 2.5
Of the Alternatives considered in the DPEIS,	Opinion noted. Please be aware that impacts to fish and wildlife could be similar under any alternative. The project selection process

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Alternative A would have the least impact to wildlife, fisheries, and their habitats and is therefore the most favorable of the given alternatives. Modification of Alternative A to include language from Alternative C1 for making conservation easements a priority within one mile of lands with existing conservation authorizations would make the alternative even better as it relates to natural resource conservation. FWP	is intended to filter out those lands that may not be suitable for developed uses for one reason or another. Site-specific impacts would be evaluated on a project level basis through local review and MEPA.
Misc. Comments	
A current leaseholder at Echo Lake would prefer to keep that area as it is currently. In addition, there is concern over diversion of water to Echo Lake by a land owner whose property runs through the main runoff source for Echo Lake. She would like a specific response to this concern. DB	Trust lands in the area of Echo Lake are currently managed for timber and residential uses. Any significant deviation from the current management philosophy would be subject to some level of public comment and review. Current proposals in the area include leasing land to FW&Ps for a boat ramp. This may be followed with a proposal from DNRC to create additional residential lots. Under the latter situation, this action would be subject to local subdivision review and involve public notification. The water diversion issue is outside the scope of this EIS.
There is no provision to adopt a strict, independent appraisal system. AFTWR, FOTWS	This is outside the scope of this EIS.
Selling land should not be an option for reasons related to "long term productivity", and associated impacts.	Selling land is one of many tools to achieve the interests of the trusts and would be identified in most situations as a REMB project so would be linked to the funnel process and project identification process. Alternative D identifies a desire to achieve outcome objectives for project lands through improved land entitlements and the public process associated with securing most entitlements would also be a means for considering local community values. See also sections 2.3, 2.6, 2.7, 2.8, 2.10, 4.3
As a current leaseholder, we would like the option to	The programmatic Plan anticipates that DNRC would continue to manage the existing leases, as apposed to selling.

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purchase our lots. JO, DJB	See section 2.2.1.2
How does land banking relate to the PEIS?	Land banking is a tool for implementing real estate transactions. See related discussions in Section 2.3 and 4.3.
What is the basis for the statement on page 2-52 that "total acreage of Trust Lands available for casual recreation is either not expected to decrease or decrease only slightly?" This seems to be intuitively at odds with the stated intent to dispose of some lands through sale and/or development. FWP	Based on the relative number of acres that could be converted to developed uses as compared to the total trust land area, the quoted statement is accurate. Less than 1% of the state trust lands would be converted to commercial, residential or industrial uses under any of the propose alternatives. DNRC estimates that 96% of the 5.2 million acres are available for recreational use. Project level analysis will determine the actual impact that a project could have on recreation.
FWP requests that a requirement be incorporated in the real estate plan that requires the appropriate (local) regional FWP office be consulted on all land actions that could change the current status of individual Trust land tracts. FWP requests this opportunity in order to help DNRC identify important wildlife, riparian, fisheries and public recreational opportunities. FWP	DNRC and local governments consult with DFWP when conducting a MEPA analysis and/ or subdivision review.
FWP would like to recommend that DNRC consider incorporating language into the PEIS that would enable the Real Estate Program to utilize the concept of "no-cost temporary management agreements." Such language could be: "DNRC recognizes that there are circumstances under which DNRC's cost of managing a tract of State Trust land exceeds the income that the land generates to the Trust.	State trust lands that receive pressures from various sources, such as recreational uses with associated management costs, would be eligible for management and maintenance funds from the general recreational use program. Significant use by the public would suggest working with FWP and enter into a lease or license agreement to manage the recreational use by the public. FWP could then utilize the no-cost concept to offset their costs for management and administration.

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DNRC also recognizes that under such circumstances it would be a net financial benefit to the Trust and its beneficiaries to prevent the Trust from having to incur these costs. DNRC further recognizes that, for some specific parcels of land, other public bodies or nonprofit organizations may wish to manage these lands and incur the management costs for the purpose of providing public benefits consistent with their agency or organizational mission. DNRC concludes that it would be beneficial to the Trust for DNRC to enter into management agreements with other state agencies, local government bodies or nonprofit organizations (termed Temporary Managing Entity, or TME's), under which the TME's are authorized to manage State Trust land without charge to the TME, under the following specific conditions: DNRC has determined that the cost of its management of the land provides no net financial gain to the Trust, and that there is at the present time no other practical and legal use of the property that would provide revenue from the land to the Trust. A Temporary Managing Entity (TME), which must be a state agency, local government body or nonprofit organization,	

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desires to manage the property, and incur all management costs, for the purpose of providing a public benefit. The TME must submit, for DNRC review and approval, a management plan detailing all actions that the TME will undertake on the property. Actions of the TME shall not diminish the value of the School Trust or in any way impair the income-producing capability of the Trust Land. The TME may not charge for any use of the property and may not sublease the property or any of its resources or uses. The TME must maintain and provide upon request to DNRC and to the public any records pertaining to the management and use of the land. The management agreement may be cancelled at any time at the sole discretion of DNRC, provided that the TME shall be given reasonable opportunity to remove from the property any improvements or other items owned by the TME." This suggestion is being offered because no such option currently exists for DNRC. FWP believes that such an option could institutionalize DNRC's ability – at its sole discretion – to enter into temporary management agreements that would benefit the Trust by reducing costs, while also	

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maintaining resource quality and public benefits. FWP	

Key to Initials:

SI –	Sonoran Institute
SG –	Montana Smart Growth Coalition
BF –	Citizens for a Better Flathead
BP –	Bozeman Office of Planning and Community Development
JB –	Jo Ann Bernofsky
DB –	Debra Bowers
FWP –	Fish, Wildlife and Parks
JO –	John Owen
DJB –	Debra & Joe Bowers
AFTWR –	Alliance for the Wild Rockies
SVC –	Swan View Coalition
FOTWS –	Friends of the Wild Swan
CC –	Cascade County
GR --	Glen Rickett and Robert Heffner
MEIC --	Montana Environmental Information Center

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August 19, 2004

E-mail: **rembpeis@state.mt.us**

Real Estate Management Programmatic EIS Team
Department of Natural Resources and Conservation
PO Box 201601
Helena MT 59620-1601

Dear EIS Team:

Montana Fish, Wildlife, & Parks (FWP) is pleased to provide the following comments and recommendations for the Montana Department of Natural Resources and Conservation's (DNRC's) Draft Real Estate Management Programmatic Environmental Impact Statement (DPEIS).

FWP understands the need to generate revenue from State Trust lands to help fund public schools and other public institutions and facilities. However, subdivision and land development, collectively, are likely the single greatest land use threat to the fish and wildlife resources. They preclude other management options and create impacts that reach far beyond the locations of actual development.

The proposed funnel filter process in your DPEIS does appear to establish a suitable framework for identifying specific projects, and when followed by a MEPA process conducted before any specific real estate management land use decisions, regarding Trust lands are made, will likely provide for well-grounded management decisions.

Nonetheless, FWP does have concerns and is making recommendations to address the apparent direction of the EIS which appears to lean toward generating increased revenues from State Trust lands by increased sales, exchanges or leases for residential, commercial, and industrial real estate development (as stated in the plan objectives). FWP's comments and recommendations are as follows.

1. FWP recommends focusing real estate development only on those State Trust lands in and adjacent to urban areas where high growth is already occurring. To

illustrate FWP's concern, most Trust lands within FWP Region 2 (west-central Montana) are located in mountain foothill habitats or riparian areas, which provide very important wildlife habitat, such as critical big game winter range. Permanent residential, commercial or industrial structures and associated activities developed on these Trust lands would adversely affect wildlife populations.

2. In association with the recommendation above, public lands that are adjacent to urban areas with high growth potential, might still be more valuable as open space, corridors for wildlife movement (including endangered/threatened species), protective areas along streams for critical fisheries, etc. These open or scenic areas near urban settings are also important factors to consider in helping to preserve the quality of life in Montana (and benefiting tourism) by helping to maintain the viewshed, a major factor in why many people choose to live in or visit Montana.

3. To more fully document the cumulative impacts FWP suggests that you look at the option of no increased development. This analysis should document how effectively your new plan will meet your overall mission to "manage trust land resources to produce revenues for the trust beneficiaries while considering environmental factors and protecting the future income-generating capacity of the land."

4. Following are additional issues that FWP believes should be included in your analyses:

    a. Methods of mitigation covering commercial and industrial developments within areas already heavily developed and mitigation that addresses impacts across broader rural landscapes.

    b. Federal and state laws do not guarantee that legal impacts are always acceptable impacts. Potential residual adverse effects on fish and wildlife should be closely examined.

    c. Costs of government services associated with residential development of state trust lands. For an example see Comment 5 on the next page.

    d. The impact of taking lands out of traditional resource use, including the loss of associated public recreational opportunities, and converting them to limited private use.

    e. Similarly, the cumulative impacts to broader sectors of the economy require examination. For example, the economic analyses of the Thompson/Fisher conservation easement included the economic impacts of development vs. conservation and concluded that the two competing scenarios were essentially equal in terms of overall regional economic activity. However, from an equity or distributive standpoint, it concluded that the main public beneficiaries of development would be a limited

number of homeowners, while the beneficiaries of conservation would be several thousand hunters, anglers and outdoor recreationists.

f. Evaluate the impacts of real estate development on public recreational opportunities. Many Trust lands provide public access for recreational opportunities including hunting, fishing, and trapping. With the passage of SB 130 and entering into a 10 year agreement with DNRC, FWP has agreed to pay DNRC $2.00/licensee for access to Trust lands for hunting, fishing and trapping. Implicit in that agreement, and explicit in DNRC's rationale for promoting the bill and agreement, the level of opportunity available today (i.e. the quantity and quality of fish, game, recreational opportunity, etc.) is "worth" $2.00 per person. Given that, it is reasonable to argue that if DNRC subdivides or otherwise degrades the quality of the habitat, thus reducing the "value" of use of Trust lands for the uses FWP compensates the Trust, then it is reasonable to expect that recreationists and FWP should not have to pay as much in the future for public access. Conversely, if DNRC takes steps to enhance the quality of hunting or fishing on Trust lands, the "value" could rise. Subdivision and/or development of Trust lands in a way that has adverse impacts on access and wildlife can reduce the income generating potential of those lands through recreation.

5. FWP recommends that you reassess your analysis that suggests development would be restricted to the “urban fringe.” Appendix C Figures 14-16 show development potential scattered across the landscape. Such development would have extensive impacts beyond increasing “the number of encounters between humans and wildlife.” Such conflicts result in increased public demand for government agencies to solve the resulting problems. Public expectations for resolving wildlife conflicts range from reducing human safety risks to addressing the destruction of ornamental landscapes. These conflicts are frequently resolved by removing offending animals. This can result in reduced wildlife population densities surrounding such developments. There are also increased demands for fire protection, road maintenance and emergency services. All of these impacts should be evaluated in the PEIS.

   It is also recommended that you reconsider your analysis that concludes that all alternatives would have similar levels of impact on the state fisheries resource. You assume that “developers of residential lands would be required to comply with applicable regulations and requirements pertaining to control of sediment, storm water runoff control during construction of residential properties and use best management practices.” A good example of why this is not a safe assumption is the rural residential development on Plum Creek lands in western Montana. This rural residential development has involved large tract sales that are exempt from all but minor subdivision reviews. Individually, these projects may have relatively minor impacts to local water quality, but your DPEIS documents up to 23,000 acres of new rural residential development on DNRC land. Such development may result in clearing of streamside trees and brush that

could have severe consequences to fisheries habitat values, but which is also exempt from Montana SMZ law.

6. FWP recommends that you reconsider evaluating an alternative that focuses on wildlife and fisheries habitat and open space as priorities. Such an alternative would recognize the significant contribution that public lands, including Trust lands, make in generating revenues from hunting, fishing, and tourism money that benefits Montana's overall economy. Trust lands can and do generate direct revenue from these sources and the PEIS would benefit by fully exploring this type of alternative.

7. Issues that FWP believes could benefit from clarification or additional analysis include:

    a. Long-term revenue generation – land kept in public trust would theoretically generate revenue forever, while the money obtained from land sales may or may not continue to generate revenue depending on the success or failure of various investment options. A long-term economic projection that looks at the long-term income potential of the various alternatives, including the "Minimal/Passive" and "Long-Term Resource Management and Conservation" alternatives would be beneficial.

    b. What is the basis for the statement on page 2-52 that "total acreage of Trust Lands available for casual recreation is either not expected to decrease or decrease only slightly?" This seems to be intuitively at odds with the stated intent to dispose of some lands through sale and/or development.

8. The funnel filter process, where a series of filters determines the suitability of Trust lands for development, appears to be a good approach. However, FWP recommends that the presence/absence of important wildlife and fisheries habitat should be a part of the filter process. These alone should stand as criteria for no residential, commercial, or industrial development.

    a. FWP recommends introducing the following to the funnel process:

        i. No lands found within identified wildlife corridors or linkage zones should be sold or traded for development.

        ii. If Trust lands are subdivided (cabin leases, home sites) or sold (for likely development), it is important to minimize possible problems subsequent cabin or homeowners could create in "living with wildlife." FWP recommends imposing development covenants that include actions that: strictly manage potential on-site attractants (garbage, pet food, livestock feed, birdfeeders, etc.), and keep pets under control from harassing wildlife. (Please contact FWP for possible wording of such covenants.)

iii. Consider placing conservation easements on certain lands that would protect the properties from further development or limit the development allowed.

iv. Consider road closures or restricting access agreements that might otherwise encourage excessive development on adjacent lands.

9. In reviewing the various alternatives, FWP found the descriptions of impacts to conservation lands to be somewhat confusing. Although Alternative A appears to be the least aggressive approach to developing Trust lands, it also lists the fewest acres of Trust lands adjacent to conservation areas. Alternatives B, B1, C and C1 more aggressively pursue development of Trust lands for increases in revenue to the Trust; however, they also have the highest acres of conservation areas since they consider lands within ½ to 1 mile from Trust lands.

10. FWP requests that a requirement be incorporated in the real estate plan that requires the appropriate (local) regional FWP office be consulted on all land actions that could change the current status of individual Trust land tracts. FWP requests this opportunity in order to help DNRC identify important wildlife, riparian, fisheries and public recreational opportunities.

11. FWP would like to recommend that DNRC consider incorporating language into the PEIS that would enable the Real Estate Program to utilize the concept of "no-cost temporary management agreements." Such language could be:

    "DNRC recognizes that there are circumstances under which DNRC's cost of managing a tract of State Trust land exceeds the income that the land generates to the Trust. DNRC also recognizes that under such circumstances it would be a net financial benefit to the Trust and its beneficiaries to prevent the Trust from having to incur these costs. DNRC further recognizes that, for some specific parcels of land, other public bodies or nonprofit organizations may wish to manage these lands and incur the management costs for the purpose of providing public benefits consistent with their agency or organizational mission. DNRC concludes that it would be beneficial to the Trust for DNRC to enter into management agreements with other state agencies, local government bodies or nonprofit organizations (termed Temporary Managing Entity, or TME's), under which the TME's are authorized to manage State Trust land without charge to the TME, under the following specific conditions:

    - DNRC has determined that the cost of its management of the land provides no net financial gain to the Trust, and that there is at the present time no other practical and legal use of the property that would provide revenue from the land to the Trust.
    - A Temporary Managing Entity (TME), which must be a state agency, local government body or nonprofit organization, desires to manage the property, and incur all management costs, for the purpose of providing a public benefit.

- The TME must submit, for DNRC review and approval, a management plan detailing all actions that the TME will undertake on the property. Actions of the TME shall not diminish the value of the School Trust or in any way impair the income-producing capability of the Trust Land.
- The TME may not charge for any use of the property and may not sublease the property or any of its resources or uses. The TME must maintain and provide upon request to DNRC and to the public any records pertaining to the management and use of the land.
- The management agreement may be cancelled at any time at the sole discretion of DNRC, provided that the TME shall be given reasonable opportunity to remove from the property any improvements or other items owned by the TME.

This suggestion is being offered because no such option currently exists for DNRC. FWP believes that such an option could institutionalize DNRC's ability – at its sole discretion – to enter into temporary management agreements that would benefit the Trust by reducing costs, while also maintaining resource quality and public benefits.

Of the Alternatives considered in the DPEIS, FWP believes Alternative A would have the least impact to wildlife, fisheries, and their habitats and is therefore the most favorable of the given alternatives. Modification of Alternative A to include language from Alternative C1 for making conservation easements a priority within one mile of lands with existing conservation authorizations would make the alternative even better as it relates to natural resource conservation.

FWP understands that the MEPA process and requirements can be tedious and time consuming but FWP has found that thorough and exhaustive analyses of the greatest number of alternatives provides for the most positive and beneficial outcome for Montana's natural resources and the people who cherish those resources. Thank you for the opportunity to provide you with what FWP hopes are helpful comments and recommendations to aid you in the completion of your PEIS.

Sincerely,

M. Jeff Hagener
Director

I recently retired from 30 years of teaching young children and developing "traveling trunks" of natural history education materials in Missoula.

I am aware that the purpose of comments to the DPEIS is not to refer to specific parcels of land but I am concerned that the qualifying Conservation distance criteria of B-1 (1/2 mile) and C-1 (1 mile) will not provide for the possibilility of Conservation options on land that deserves Conservation.

For the past fifteen years I have visited a unique section of School Trust Land 10 miles northwest of Missoula. This section has been selectively logged and contains many trees that are 200 years old. It is a core habitat for salamanders, frogs; a refuge for deer, elk and, turkey with a significant diversity of native plants. It is an ideal site for outdoor education. It has been described as the "only intact forest land in this particular drainage." This section of school trust land is surrounded by heavily logged Plum Creek property.

Since this section is neither ½ mile nor 1 mile from existing Conservation lands it will not qualify for consideration under the B-1 Conservation Priority or the C-1 Conservation Priority.

How many more School Trust sections are deserving of Conservation but may not be so considered? Clearly we do not want to lose such habitat simply because it is overlooked by existing criteria.

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August 20, 2004

To: Trust Lands Management Division
Montana Department of Natural Resources and Conservation
1625 11th Avenue
Helena, MT 59620

From: Mayre Flowers, Program Director, Citizens For A Better Flathead

Re: Draft Real Estate Management Programmatic Environmental Impact Statement

Thank you for the opportunity to comment on the June 21, 2004 Draft Real Estate Management Programmatic EIS. Citizens For A Better Flathead is a member of the Montana Smart Growth Coalition, which has submitted comments on this DPEIS already. We support and strongly encourage your careful consideration of the detailed comments made by the Montana Smart Growth Coalition, as well as those comments submitted the Sonoran Institute, who is also a coalition member.

In addition to our support of these comments by these two organizations, we would like to emphasize the following:

- The comments submitted by the Sonoran Institute make a strong case for more clearly defining goals to guide the work of the REMB to avoid pitfalls such as developer driven growth. We also suggest that an ethics/public disclosure policy be established that provides full transparency and appropriate limitations to developer-driven influence on state lands decisions that might not be accomplished under the currently proposed underlying goals and filter criteria. We feel that such a policy is necessary,given ethical concerns and lack of public disclosure situations that have arisen in the course of the Whitefish State Lands discussions, as well as those with Section 36 in Kalispell.

- Local communities rely on taxes to cover costs of services. These taxes are generated from both the land and from the improvements placed on the land. Under current state law, state lands are exempt from such taxes. An attempt for the first time to address this issue occurred in the development agreement for Section 36. Here they implemented a limited type of beneficial use tax system that would attempt to compensate the effected local government. I am not aware that any analysis has been done to measure the adequacy of the beneficial use tax agreement reached on Section 36 in Kalispell or if a similar agreement has been put in place for other state lands on which development has occurred, such as with cabin leases. A more detailed and careful analysis of the use of a beneficial tax as an appropriate tool to address the ability of development on state lands to fairly and equally compensate local governments for the cost of services caused by development is required because this PEIS contemplates a much grander and long-range scheme of development for state lands across the state.

- The taxes that local communities rely on to cover cost of services are established in part by a state appraisal system that, over a set period of years, calls for reappraisal of lands and improvements for taxing purposes. Again, in the case of the plan put in place for Section 36 in Kalispell, an appraisal period was established that differed from the one used for private lands in the state. It is our understanding that this resulted in both a decreased return in beneficial use taxes generated as well as a defacto state subsidy to attract development to that site away from other private land sites by offering a longer period for implementation of a lease rate review process established for these lands. This is an area that we feel needs greater analysis within the PEIS. Development permitted on state lands should not result in false economic growth that can destabilize the local tax-base by shifting the location of, for example, retail or other commercial uses to state lands as a result of "loopholes" that allow state lands to create a tax-shelter.

- In management of state lands for the benefit of the trust, it is recognized that this needs to be done with consideration for the goals, needs and assets of the local community. The state and local governments have common interest in areas such as economic development and affordable housing. Without clearly established goals to guide real estate management decisions and active coordination with other state agencies to achieve these goals, less desirable development for the long term economic and quality of life interests of the community and trust may result. This was evident in the case of Section 36 in Kalispell where changes to land use plans to accommodate development proposed by DNRC on Section 36 were based on a plan that called for the development of a high-tech business park. A developer was semi-officially "endorsed" by the local DNRC office and invited as a spokesperson to numerous community meetings as capable of delivering just such a development if the local land use plans were changed to accommodate this development. The plans were changed. This developer, however, quickly disappeared after the land use plans were changed, and in fact was soon after shown not to have been capable of delivering on the proposed development scheme.

  Furthermore, despite a two-year period established to develop the concept of and attract needed resources for a high-tech business park, there was no structure in place to insure that DNRC utilized its own and other state resources to meet jointly established and publicly proclaimed goals for this neighborhood plan. Instead, this land is now being used for retail development (a Lowes and Costco), with little to no follow through on efforts to attract better paying skilled work or meet the affordable housing needs of the community. Private lands already zoned for commercial uses in the area remain underdeveloped.

  This PEIS should evaluate the structure or policies needed to insure that the DNRC can utilize its own, and the resources of other state agencies, to meet jointly established and publicly proclaimed goals for neighborhood plans, or other land use, transportation, affordable housing or economic development plans, associated with development on state lands in relationship to the community in which they are located. Neighborhood plan goals being discussed in association with the Whitefish state lands would require possible intergovernmental support for legislation, bonding, or phased conservation strategies that, in the long term,

may enable the school trust and the local government bodies to better achieve identified goals.

- The development of state trust lands for commercial, industrial, and residential uses may also place the state trust in the role of competing for services that receive support from federal and state sources that derive there revenue in part from the taxes generated by the citizens of Montana. School trust lands, however, to do not generate tax funds for these services. The question then arises of how the allocation of these limited resources should be made for resources such as sewer treatment plants, roads, and such, when state lands become in competition with private lands for these limited resources. Additionally, clarification needs to be given to the way local fees and impact fees will also be applied to state lands. There is, for example, an interesting situation developing on Section 36 in Kalispell. There the DNRC is proposing that the Federal Highway Department be responsible for the purchase of right of way for a Kalispell By-pass that has been planned for over ten years. Yet the development potential of these state lands is enhanced by this road being built for the state through Section 36 at no cost to the state. The State in turn may need to incur additional costs of redesigning this by-pass and the intersection region of Reserve and US 93 as a result of the type of development being approved on Section 36 that is generating significant more traffic than its former agricultural uses. An analysis should be done of the cost-benefits that the private sector will incur if state lands are allowed to have equal access to state and federal sources of funding to which they have never contributed.

In closing, we encourage you to allow the Whitefish state land planning process to be given time to be more fully developed prior to closing your scoping for this PEIS. Additionally, we encourage you to analyze more carefully concerns already raised in the process of development that is occurring on Section 36 in Kalispell. Thank you again for this opportunity to provide input in this process.

MONTANA SMART GROWTH COALITION

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August 16, 2004

To: Trust Land Management Division of the Montana Department of Natural Resources and Conservation.

From: Tim Davis, Executive Director Montana Smart Growth Coalition.

RE: Comments on the Draft Real Estate Management Programmatic Environmental Impact Statement.

Thank you for the opportunity to comment on the June 21, 2004 Draft Real Estate Management Programmatic EIS. The forty member groups of the Montana Smart Growth Coalition appreciate all the work and the amount analysis and study that went into the DPEIS.

Unfortunately, we feel that DPEIS lacks the criteria and direction necessary to maximize the long-term revenue generation for trust beneficiaries and to protect Montana's environment or tax payers from adverse and cumulative impacts that real estate and development decisions on state trust lands could potentially have - regardless of which of the proposed alternatives are selected as the preferred alternative.

The DPEIS seems to be based on the false assumption that a large percentage of school trust lands should be made available for either commercial leases or for sprawling rural subdivisions - regardless of the impact that the development will have on local infrastructure, on the efficient and attractive future growth of communities, on the health of downtown areas, or on the environment.

The DPEIS as written would lead to a reactive system the would neither maximize the long term revenues of the trust lands nor lead to attractive and efficient development.

We recommend that the PEIS be changed in the following three ways:

1. Replace the current assumptions that the DPEIS is based on with the goal that REMB will proactively analyze trust lands and designate a small and manageable number of trust lands that are ripe for development and then actively promote the development of those lands in an attractive, efficient, and profitable fashion.

2. Change the filter process to significantly limit the scope of land to be considered for either sale or development in order to maximize long-term income for the trust beneficiaries and to ensure the efficient use

of REMB resources and staff time while maintaining the largest possible base of school trust lands; and,

3. Adopt performance standards or outcome criteria that all developments on trust lands must adhere to in order to maximize long-term profits to beneficiaries while minimizing the impact of the development on infrastructure, taxpayers, and on the viewshed, water quality, agricultural land based, and wildlife.

Performance standards/outcome criteria that should be included in the PEIS and that all developments on school trust lands, whether the land is sold or leased, should adhere to include:

1. Compliance with local plans (i.e. growth policies, neighborhood plans, local transportation and other infrastructure plans), regulations, and MEPA;

2. For lands adjacent to cities and towns, development at urban densities with mixed uses and interconnected street system

3. In rural areas, where development is appropriate, cluster developments away from neighboring open lands with at least 60% of land protected in perpetuity either through a conservation easement or deed restriction and if the land contains crucial winter range for big game species, at least 90% of that land should be protected;

4. Development pays for off-site and on-site impacts on infrastructure and services;

5. Analysis and mitigation of adverse and/or cumulative impacts on water quality and quantity, wildlife corridors and habitat, local agricultural land base, infrastructure capacity and services, and economic health of downtown business districts; and

6. Location and design of development to minimize aesthetic impacts.

By adopting these outcome criteria the PEIS will create an efficient development process for the development of selected school trust lands - *because no matter who develops the land, whether it is the state or a private developer, the state will be certain that the development will be of a high quality* while protecting the amenities that make trust lands valuable in the first place and using REMB staff and infrastructure efficiently.

These outcome criteria will have several benefits including: protecting the long term revenue generating potential of trust lands by protecting the amenities that make the land valuable; ensuring that development on trust lands will not create "nightmare" examples of bad development that will lead to a backlash against the development of school trust

lands; and will not induce growth in locations that will raise taxes and/or degrade local roads, water quality and quantity, aesthetic values, and other amenities.

These criteria will also help to ensure that REMB and the Land Board are presented with the best possible development option for the land rather than simply the easiest development option. For example, rather than simply selling a lot of state trust lands five miles from a town to be subdivided into 10 acre lots. These criteria will help ensure that cluster development and similar community friendly development options are considered.

These criteria will maximize the income from the development of trust lands in the following ways:

1. Home buyers in Montana and elsewhere have shown that they will pay a premium for access to and a view of permanent open space so that same lot would generate the same amount or more income to trust beneficiaries if homes are clustered in one area while a majority of the land remains in open space where it can generate timber, ag, or grazing revenues.
2. Spending less money for on-site and off-site infrastructure by either clustering homes or developing a mixed-use commercial/residential development that extends a city or town's street network;
3. Protecting the amenities the make the land valuable; and
4. Ensuring that land is not developed until it is ripe and most valuable to trust beneficiaries while maintaining the overall land base and the sustained yield it represents.

We recognize that REMB will not be the developer on most school trust lands. However, that does not limit REMB from being able to use development agreements, contracts, deed restricts, and covenants to implement the criteria as part of development on state trust lands.

Detailed comments on the DPEIS include:

- 2.9.2.1 - 3: The DPEIS states that REMB will use exemptions to remain competitive whereas 5.2 states that "REMB … intends to waive these rights of exemption" and "[adhere] to local land use regulations." The PEIS should clear up these contradictory statements by stating that REMB will comply with both local regulations and plans as well as with MEPA, but then goes on to say that they will seek to use exemptions from either where it helps maximize revenues.

- 2.9.2: The DPEIS states incorrectly, as do other places in the DPEIS, that "development on school trust lands would contribute to those cumulative impacts [that residential, commercial, and industrial development has on the environment]. However, these impacts would occur regardless of whether the development occurs on state lands." The PEIS should be amended to state that "the location and design of development on school trust lands will determine the type and amount of adverse and cumulative impact that the development will have. REMB shall seek to minimize any

adverse and cumulative impacts through the criteria above and locating and designing development appropriately."

- 2.9.3.2 (B & B-1): This section needs to be changed to clearly state that REMB will not seek to undermine local land use planning goals and regulations for the sake of short term profit.

- 2.9.3.3 (C & C-1): This section seems to indicate that REMB will act too aggressively and would undermine local planning goals and regulations.

- 2.9.4.2 and 3.4.4.2: These sections provide the start of what we think that the PEIS should clearly state -- that REMB will enter into and provide resources for local cities and counties to conduct detailed land use planning of future urban areas, areas that will transition to urban development in the next 20 years, and areas that will and should remain rural. REMB should then assist local governments in detailed infrastructure planning for urban and transition areas and establish standards that will ensure the future development includes urban standards in urban areas, allows for efficient future urban growth in transition areas, and protects rural amenities. This type of detailed planning will benefit trust beneficiaries in two ways: 1) by detailing the type of infrastructure that will be available to a particular parcel of trust land and thereby speeding up the appropriate development potential; and 2) by protecting the community and natural amenities on and around parcels of trust land.

- 2.9.5.3 and 2.9.5.5: While the DPEIS acknowledges to the fact that conservation will allow some ag, grazing, and timber use to continue, these sections of the PEIS need to much more clearly state that REMB will encourage conservation not only through purchase of development rights but also through cluster/conservation development on lands designated for residential development that will allow continued farming, ranching, and timber harvest will not only raise money from these activities. This type of cluster/conservation development has the benefit of bringing in money from real estate sales of the easements or cluster development while also minimizing the cost to tax payers to provide infrastructure and services to these areas and will protect the amenities, like quality of life and open space, that make people want to live and work in Montana.

  The DPEIS does state that none of the alternatives will discourage conservation, but unfortunately it does not include a criteria that directs REMB to conserve land and local resources as part of any alternative and development decision. For those reasons, criteria should be included to ensure that all developments, leases, or sales takes into account the long term economic benefits, impact on amenities and local tax payers, and conservation development alternatives and benefits. For these reasons, we feel that B-1 provides the best option for long-term revenue maximization because it will develop lands too quickly and inappropriately as long as criteria like those proposed above are considered.

- 2.9.7.3: Again, C and C-1 are simply too aggressive and would undermine the long term economic benefits of state lands to the primary objective, revenue generation. The rapid divestiture of state lands for sales and development without taking into account efficient land use, local planning goals, conservation development alternatives, and other criteria that would protect long term values would dramatically diminish the long term health of trust lands and revenue by undermining the amenities and economic assets that the lands provide.

Table 2-19:

- (6) This item needs to be changed to make it clear that REMB will not seek exemptions from MEPA and local land use regulations and planning compliance;
- (7)-(9) The funnel here is too coarse and much too focus on process rather than outcomes. For that reason, again, the PEIS and Land Board should clearly establish a set of outcome criteria that will protect the natural amenities, efficient use of land, water, and taxes, as well as requiring that conservation alternatives be considered in order to protect the long term value of trust lands.
    - Without criteria stating that development on state lands shall pay for the on-site and off-site impacts on roads, water quality and quantity, emergency services, police and fire protection, etc., the development or sale to school trust lands will result in a form of stealing from local tax payers (Peter) to pay developers and REMB (Paul). For example, if development of trust lands dumps 100 new cars on to a county road outside five miles outside without the developer paying to upgrade that road to handle the new traffic then local taxpayers will eventually have to foot the bill to rebuild the road - a multi-million dollar subsidy.
    - The development of trust lands does not need to comply with the rational nexis and proportionality that the courts have said should apply when requiring developers to pay for the impact that their development will have on infrastructure and services because the development will need to enter into a contract to develop or purchase trust lands and the requirement that they development of trust lands pays its own way could be include in either a lease contract or in a deed restriction. In other words, these impact costs would be applied on the development as part of a free market agreement between REMB and the developer - if he doesn't want to pay for impacts then he will not be the right person to develop that piece of trust lands. This is another reason that Alternative B-1 is the most attractive - because it would create the revenue, time, and impetus for REMB to work with local governments to plan for the efficient future growth of infrastructure and services.
    - We would also recommend that the PEIS establish a taskforce of all state agencies involved in infrastructure development, wildlife, water, and the management of other state resources to discuss the most efficient use of tax and natural resrouces as part of any development of trust lands - this could lead to maximizing and leveraging of state agency resources and minimizing negative impacts of development.

For example, if a parcel of land outside of a town were to be developed near a state highway, the Dept of Transportation and Board of Housing might be able to bring in funding to provide roads and enable the development to include affordable homes.

- 3.4.4.2: The PEIS should more clearly state the REMB will work to help local governments plan future efficient infrastructure and services and state that REMB will ensure that development will pay its own way.

- 3.4.5.1: This section needs to be changed to include the public cost of providing services as part of any income calculation.

- 4.1.2: As part of these GIS growth projections REMB and the PEIS should show how land use in Montana is projected to grow by 2025 including where that growth will take place and at what densities and at what impact on roads and other services. The PEIS should establish a criteria stating that REMB shall develop urban lands at urban densities first and shall seek to develop rural lands using conservation and cluster development. This is consistent with other state trust land programs. For example, New Mexico is focusing its efforts on trust lands near communities with a population of 2,500 and up.

- 4.2: The table does not compare population growth to growth in land used to accommodate population growth and where will that land be located. This analysis needs to be included in the PEIS as well as the difference between the percentage of population growth versus the percentage in the growth of land to accommodate the population growth. These maps and projections should be improve REMB's analysis of which lands and at what rate and densities those lands could and should be developed. This type of analysis should be made available to help local governments plan for future growth and infrastructure where school trust lands might be developed. Specifically, the table is nearly meaningless without these land use projections and density comparisons which are necessary when discussing the location and need for the development of trust lands.

- 4.2.1 (B and C): It is clearly false for the PEIS to claim, is it does here, that industrial, commercial, or residential development in alternatives B or C will "not be growth inducing." Clearly, the location of the development of trust lands will have the result of inducing growth on those lands and on the lands around them. The growth may have been coming anyway, but the most important factor when determining the impact it will have is not that we will grow, but where that growth takes place and how it is designed. The same is true for conservation, it will effect how and where growth will locate. The PEIS recognizes the growth inducing impacts of conservation and needs to do so with other land uses and establish criteria that will ensure that trust land decisions will not induce growth in inappropriate locations and with inappropriate designs - for example, these criteria would help ensure that a subdivision with 100 houses is not developed on trust lands in a rural area far from town.

- 4.2.1.2: Cumulative impacts of the development of a particular piece of land or trust lands, like inducing growth above, will depend upon the location and design of the development. For example, Alternative C without any criteria that will ensure that development is location appropriate and that will not have a negative cumulative impact on water, wildlife, or roads could have a cumulative impact on all three by inducing rapid development in inappropriate locations. Local regulations, including sanitation regulations, do not necessarily take into account cumulative impacts and it would be a tragedy if the development of state lands resulted in cumulative impacts that could include septic systems on school trust lands poisoning drinking water of neighbors, or causing tax payers to pay $10 million to rebuild a county road that has been degraded by the impact of new traffic caused by development on trust lands, or having development on trust lands cut off an important wildlife corridor. For these reasons, we believe that Alternative B-1 with a clear set of development criteria should be the preferred alternative.

- In this section, the DPEIS falsely states that economic conditions will not be adversely affected by the development of trust lands. Inappropriate development of trust lands could undermine local infrastructure, spur sprawling development, ruin an important natural amenity like a viewshed, or undermine a downtown business district by enabling a big box development or mall to locate outside of town. For that reason, clear criteria need to exist that will protect local amenities and infrastructure. The PEIS should also direct REMB to be involved in helping develop local plans and standards that are essential to protect the long-term interest of trust lands - not just the short term.

- 4.2.1.5: The statement in this section that short-term and long-term productivity are identical is false. Short-term gains can often undermine the amenities that are crucial for long-term gain. However, if long-term criteria are in place then short term revenues can be raised within a predictable development process, but without criteria protecting the long-term revenue generating potential of trust lands will certainly be lost. For example, if development is allowed at too low of a density on the edge of town it will be too expensive to retrofit the infrastructure needed to infill and maximize long term income in the future. Similarly, if development is induced in rural areas outside of towns then the demise of downtown business districts and of local amenities like open space will have a dramatic effect on the long-term marketability. Trust land development need to take into account the long term impacts and revenues.

- 4.2.4: The PEIS should clearly state that REMB will take part in the local planning as a means of identifying which lands should be acquired to maximize revenue generating potential in the long term.

- DEQ clearly acknowledges that it does not take into account cumulative impacts of subdivisions on water quality and quantity. This is just one reason that the PEIS cannot claim to have no cumulative impact if it simply complies with state sanitation

and subdivision standards. Therefore, the PEIS should be amended to require that any development on trust lands needs to address cumulative water and sanitation impacts and mitigate those impacts. Otherwise, the development will be passing the cost of future water contamination or loss of water quantity to neighbors who might have to pay to drill deeper wells or have retrofit wells and sewer systems at a much higher cost in the future.

A few examples of Montana's rising groundwater contamination:

- In 1973, the U.S. Geological Survey found a median nitrate concentration of 1.0 mg/l in the Helena Valley—a safe level. After nearly three decades of suburban sprawl, readings have jumped to between 7.89 and 20.10 mg/l—well above the 5.0 mg/l the state deems threatening enough to limit septic use.

- In the Upper/Lower River Road area outside Great Falls, more than 700 homes, most with septics and wells, have been scattered over 3 sq. mi. in recent decades. After studying the area's groundwater, state and local governments found the pollution so great that they recommended homeowners shell out for a community water and sewer system. The cost would run into the millions of dollars.

- A 1996 study of septic systems and wells in the Missoula Valley found that between 9.4% and 15.3% of sampled wells had bacteria contamination from septic wastes. The contamination, warned the report, puts several parts of the valley are at risk of waterborne disease outbreaks.

- Other areas that have shown high levels of nitrates include the Summit Valley area in Silver Bow County, as has the Four Corners area in Gallatin County.

- In addition to contamination, drinking water wells have gone dry as a result of unplanned development in Sypes Canyon on the west slope of the Bridger Mountains, in the North Hills of Helena Valley, in the Pine Hills area near Miles City, in the Larson Creek area in the Bitterroot, and in the Yellowstone Valley west of Billings.

- The PEIS again does not address the fact that location and design will be the primary factors on whether or not the development of trust lands will have an adverse or cumulative impact. Clearly, inappropriately placed and poorly designed development will effect aesthetics which is obviously one of the key natural amenities that Montana offers people coming to live and work and buy

land here. That said, we do support the proposal to require "the incorporation of natural landscape retention in residential development design" but would like the PEIS to add "development on trust lands shall not be allow to break the ridgeline as viewed from any public right of way." The PEIS should also include criteria to require that industrial, commercial, and residential developments be designed and located in attractive, community appropriate motifs that enhance the aesthetics of the community especially when located at or near a community's gateway or entrance.

- 4.2.15.2: While we support the statement under Alternative B and B-1 that "REMB would direct some of its staff resources to overall community improvements planning" we think that it is crucial that the PEIS directs REMB to assist local governments near school trust lands that have a high probability of being developed to be proactive in planning for the most efficient use of infrastructure to service the future growth of urban areas over the next 20 years. It is also essential that the PEIS includes the criteria to ensure that the development of trust lands will pay its own way and will minimize adverse or cumulative impacts by either inducing growth or damaging aesthetics, water quality, wildlife, or other natural amenities that are crucial to long term revenue generation.

- 4.3.1: The PEIS should direct REMB to produce an annual report that details how REMB is doing implementing the criteria recommended above and on the questions on section 4-55. These questions should be expanded to include development and service related expenses incurred by REMB, the developer, and local taxpayers and compare these costs to revenues generated on a project basis and cumulatively over time. REMB could relatively easily establish a database where economic statistics and GIS information are entered on a daily basis as part of REMB's daily work and made available on-line - this would help improve REMB's efficiency by making it clear how they are doing at carrying out the provisions of the PEIS.

cc:
Montana State Board of Land Commissioners Brown, McCulloch, McGrath, and Morrison.

August 19, 2004

VIA ELECTRONIC DELIVERY AND FEDERAL EXPRESS

Trust Lands Management Division
Montana Department of Natural Resources and Conservation
1625 11th Avenue
Helena, MT 59620

Re: Public Comments of Lincoln Institute of Land Policy/Sonoran Institute Joint Venture on the June 21, 2004 Draft Real Estate Management Programmatic Environmental Impact Statement

Dear Sirs and Madams:

Thank you for the opportunity to comment on the Department of Natural Resources and Conservation's (DNRC) Draft Real Estate Management Programmatic Environmental Impact Statement, dated June 21, 2004 (Draft PEIS). We commend DNRC for its commitment to develop a transparent framework that will guide the Real Estate Management Bureau (REMB) and the Trust Lands Management Division (TLMD) in meeting its trust responsibilities while considering environmental factors and protecting the future income-generating capacity of the land.

I. Background

Over the past year and a half, the Sonoran Institute (SI)[2] and the Lincoln Institute of Land Policy (LILP)[3] have been engaged in a joint venture program on state trust lands in the West. The joint venture seeks to assist efforts to modernize state trust land laws and regulations in key western states; to foster education and research efforts that focus on key issues related to state trust land administration; to increase public awareness of the resource and economic values of state trust lands along with the impacts of state trust land management decisions on local communities and implications for public finance; to develop and implement model projects designed to explore innovative approaches to collaborative land use planning and conservation management of state trust lands; and to provide relevant technical information and tools to decision makers and agency staff

[2] SI is a non-profit conservation organization based in Tucson, Arizona, with offices in Phoenix, Arizona and Bozeman, Montana. SI works throughout the intermountain west, with regional work in the Sonoran Desert and the Northern Rockies, as well as west-wide programs in socioeconomics, land use planning, and state trust lands, among others. SI distinguishes itself through a commitment to community-based and collaborative conservation work, with a strong emphasis on providing information and technical assistance to guide good decision-making by local communities and local, state, and federal resource managers.

[3] LILP is a nonprofit educational institution based in Cambridge, Massachusetts, and offers courses, conferences, and other outreach programs in land use planning and land policy to both professionals and nonprofessionals, funds and conducts research on land policy issues, and publishes a variety of materials in academic and non-academic settings.

involved in state trust land management. In pursuit of these goals, the joint venture is currently engaged in a number of projects and programs around the intermountain West, including research and policy analysis with regard to trust management strategies, community land use planning projects involving state trust lands in Arizona and Montana, and participation in a comprehensive proposal to change the laws governing trust land management in Arizona.

The type of issues addressed in the Draft PEIS and the type of public process that the state is currently engaged in are at the core of the LILP/SI joint venture goals and activities.[4] As the West continues to urbanize and the regional economies continue to shift away from more traditional, natural resource management towards the emerging economies of the information age, trust land managers across the West are recognizing a need to broaden the land use activities of their trust land portfolios to meet their fiduciary responsibilities, the demands of urbanization as well as growing interests in the recreational and environmental values associated with their land portfolio. These larger shifts implicate not only the traditional fiduciary responsibilities of trust managers, but also important public values that are frequently associated with trust lands – particularly interests in conservation and quality growth that promotes vibrant economies, sustainable communities, and healthy landscapes.[5]

A central focus of the LILP/SI joint venture relates to the importance of balancing public values with the fiduciary responsibilities of trust land managers. Our work thus far has suggested that consideration for public values is an essential practical component of the fiduciary responsibilities of trust managers. The failure to consider these values inevitably leads to conflict, and, ultimately, more constraints on trust management and more uncertainty – which in turn translates into reduced economic value for trust beneficiaries. With particular regard to the commercial and residential development of trust lands, our experiences thus far have revealed several important lessons:

- By identifying a clear subset of trust lands to be considered for residential, commercial and industrial development within defined timeframes, and by developing related disposition plans that focus on these lands, trust managers can provide certainty to local communities while focusing limited resources on the development of parcels that will return the highest values to trust beneficiaries.

- Planning lands collaboratively with local communities can reduce conflict, identify lands that have important public values, minimize the risk of poorly-planned development that is detrimental to the interests of local communities and the long-term value of trust lands in and around those communities, and create effective and creative implementation strategies that meet with the needs of the trust and the local community.

[4] Andy Laurenzi, "State Trust Lands: Balancing Public Values and Fiduciary Responsibility," Land Lines Magazine, pp. 1-4 (July 2004).
[5] Ray Rasker, et. al., Prosperity in the 21st Century West: The Role of Protected Public Lands, Sonoran Institute 2004.

- Good land use planning adds value that will generate higher returns when trust lands are disposed.

With these lessons in mind, we have undertaken a comprehensive review of the Draft PEIS in hopes of providing some constructive feedback on DNRC's proposal.

Overall, we believe that the "funnel filter" approach proposed by DNRC has significant merit as a method for administering trust lands, and the development and application of the proposed analytical tools can serve as a progressive model for other states that are assessing the development potential of their portfolio. We have identified six areas in which we believe merit additional consideration and may strengthen the proposal, both in terms of increasing potential benefits to trust beneficiaries as well as providing increased consideration for public values and minimizing potential conflict with local communities. We have divided our comments into three major areas: recommendations related to the goal of the program, recommendations on the development and application of the funnel filter and it s component elements, and recommendations related to the assessment of the economic and environmental impacts of the alternatives. These comments follow in Sections II-IV below; Section V of our comments proposes the consideration of a new alternative that attempts to better illustrate the application of our recommendations.

II. The Draft PEIS Lacks a Clearly Defined Goal

The alternatives in the Draft PEIS identify five different scenarios for trust lands disposal by REMB: an aggressive strategy in which REMB would actively seek to dispose of state lands in each land office area for commercial, industrial and residential development in an amount equivalent to approximately twice the proportionate quantity of private lands developed for those purposes in the same land office area (Alternative C), PEIS Sec. 2.6.4, p. 2-44; an active strategy in which REMB would seek to dispose of trust lands in an amount that is approximately proportionate to the quantity of private lands that are developed (Alternative B), PEIS Sec. 2.6.2, p. 2-37; and a less active strategy (similar to the current state of affairs) in which REMB would seek to dispose of trust lands in amounts that are equivalent to approximately half the proportionate quantity of private lands that are developed (Alternative A),) PEIS 2.6.1, p. 2-31; and two "conservation" alternatives, Alternatives C-1 and B-1, in which REMB would seek to dispose of approximately half the land proposed for residential development under Alternatives C and B, respectively, for conservation purposes (although Alternatives C and B would not prohibit conservation sales or leases, these sales and leases would not be "counted" towards the acreages proposed for development under the alternatives), PEIS Sec. 2.6.5, p. 2-50; PEIS Sec. 2.6.3, p. 2-43. Each of these five alternatives is tied to one of three acreage ranges for area of trust lands that would be affected by development under the aggressive, active, and less active scenarios.

In conversations with REMB staff, we were informed that the acreage estimates associated with the different alternatives are not in fact intended to be disposition "targets" which REMB would attempt to achieve; rather, the estimates are intended to

illuminate three different "management philosophies" for state trust lands that are embodied in the alternatives – i.e., much more aggressive disposal, moderately more aggressive disposal, and a disposal strategy that would be similar to the status quo. See PEIS, p. E-8; Sec. 2-4, p. 2-28. (We note that this is somewhat confusing, since the only apparent difference between Alternatives B and C and Alternatives B-1 and C-1 is that under the conservation alternatives, the conservation sales and leases would not "count" towards the acreages proposed for development; this implies some sort of acreage target. We suggest that the proposal is ambiguous in this regard and should be clarified.)

As discussed elsewhere in our comments below, we believe that some of the assumptions that underlie these management philosophies may require further analysis. Regardless, these philosophies do not seem to be clearly connected in the Draft PEIS to the larger goals of DNRC as the manager of the state land portfolio as a whole, nor do they appear to be tied to an identifiable goal for REMB as a real estate manager.

As the manager of a perpetual trust, we assume that DNRC intends to maintain a diverse trust portfolio, and that it intends to do so essentially in perpetuity. As such, we also assume that for the foreseeable future, DNRC only intends to invest a small portion of its overall portfolio into commercial or residential development use, with the vast majority of state lands remaining in sustainable natural resource uses like timber, agriculture, grazing, and conservation, or long-term non-renewable resource extraction uses such as mining and natural gas development. This seems consistent with the alternatives presented in the Draft PEIS, since even under the most "aggressive" of the three disposition philosophies, Alternative C, DNRC estimates that it would dispose of between 20,478 and 34,123 acres for commercial, industrial, and residential development out of the state's 5.1 million acres of trust land over the next twenty years, or only around one half of one percent of the total trust portfolio. See Tables 2-14 and 2-15. p. 2-44.

However, despite the fact that virtually all of the remaining portfolio will be managed for other purposes by DNRC, the Draft PEIS appears to assume that virtually any parcel in the entire trust portfolio could be made available for commercial, industrial, or residential development if in staff's evaluation, the proposed "funnel filter" process demonstrates that a proposed development project would be viable on that parcel. It therefore appears that DNRC implicitly regards development for commercial, industrial or residential use as meriting consideration on every parcel of trust land, regardless of other trust management priorities. We would suggest that this assumption may not be well-founded, since as a prudent trust manager, there may be any number of considerations that DNRC must undertake before concluding that a commercial or residential use is in fact the "highest and best use." However, because the relationship of the proposed REMB program to DNRC's larger portfolio management strategy is not clearly spelled out in the Draft PEIS, it is extremely difficult to evaluate whether and to what extent the proposed REMB program and the various proposed alternatives are consistent with this management strategy, the mission of the agency, and with the fiduciary responsibilities of DNRC as a trustee.

It appears that under this proposal, decisions regarding the appropriate use of trust lands for development would largely become a collective, internal staff decision that would consider a variety of factors illuminated by the funnel filter, but which could be second-guessed at the project environmental assessment stage. We would therefore suggest that DNRC clearly identify the proposed relationship of REMB's ongoing disposal activities to DNRC's continuing trust management goals, to establish clear objectives to guide REMB activities and to place more emphasis on a priori decision-making with respect to lands under consideration for disposal for residential, industrial or commercial uses (or other special uses). In much the same way that lands are classified as forest land suitable for timber production, we suggest that REMB could identify a subset of lands that can be classified as suitable for residential, industrial or commercial development based on variety of factors, many of which are already embodied in DNRC's proposed landscape-level funnel filter approach.

Without an articulated goal, it is difficult to evaluate which alternative should be chosen in the final PEIS; i.e., because the alternatives were not developed with regard to a goal there is no standard against which the alternatives can be evaluated. As such, the "alternatives" evaluated in the PEIS are less "alternatives" than they are a description of five slightly different strategies that REMB might pursue in disposing of trust lands for commercial, industrial, and residential development, with project selection driven by internal evaluations of proponent or staff driven proposals. Just as importantly, the lack of a goal with benchmarks will make it difficult to justify staff decision-making and to prioritize and direct REMB resources towards a specific end; moreover, since the objective of the program is not clearly defined, it will be difficult to evaluate the success or failure of the chosen alternative and the overall effectiveness of REMB programs at the end of the first five-year period.

We therefore suggest that DNRC clearly identify the goal(s) of REMB's land management program, as well as relevant benchmarks that are quantifiable and easily assessed. Examples of REMB goals might be, for example, to increase trust revenue by a certain percentage over a certain period, to diversify the trust portfolio to reflect a certain percentage of ownership in various uses over a certain period, to dispose of lands that meet a specified set of characteristics over a certain period, to obtain value for the trust while conserving lands that meet a specified set of characteristics, and so forth.

III. The Funnel Filter Process Could be Significantly Enhanced

A. The "funnel filter" should be used proactively to identify a subset of lands with high development potential, focusing limited REMB resources and providing increased certainty for local communities and stakeholders.

DNRC proposes a "funnel filter" methodology for identifying and evaluating development opportunities on state trust lands. The filter process would involve a progressive analysis of development suitability on state trust lands, beginning with a "physical environment filter" to remove from consideration lands that are not suitable for development due to slopes and floodplains, then applying a "transitional filter" based on

a locational attributes analysis to identify lands with high, medium, and low suitability for development, and finally applying a "market filter" to identify what proportion of lands anticipated for growth can reasonably be "captured" by the REMB. This landscape-level analysis would be followed by a project-level analysis of market demand and economic factors, local planning, MEPA analysis, and analysis and application of other regulatory constraints and requirements in order to identify and evaluate development opportunities. PEIS Sec. 2.3.1.7, pp. 2-18 to 2-19, and Figures 2-3 and 2-4, pp. 2-16 to 2-17.

We believe that the "funnel filter" concept offers a valuable tool for evaluating development opportunities on state trust lands. As discussed further in Sections III(C) – (F) of our comments, we suggest that some additional analysis at each level of the filter process could substantially improve the results of the filter analysis. However, we are also concerned that as the filter tool is currently proposed to be applied, REMB will be continuing to function in an essentially "reactive" mode to project opportunities, rather than taking advantage of a more focused, proactive approach.

At first reading, the application of the landscape level filters would seem to limit the pool of lands that would be considered by REMB for development projects. However, the Draft PEIS suggests that although the application of these first three stages will be used to inform the alternatives selection in the PEIS and inform the various "philosophies," REMB would not actually exclude any trust lands from consideration for development at this stage. Instead, the filter tool will essentially be applied on a project by project basis to inform project selection by REMB staff from a pool of projects proposed by staff or outside interests. Once a proposal was identified, the filter would be used to rank that proposal in comparison to other proposals that REMB might be considering.

Our experience suggests that this strategy may serve to increase the potential conflicts over the development of trust lands, as it will provide no certainty to interested parties – such as local communities, recreational users, conservation groups, and state land lessees – that a given parcel of trust land will or will not be considered for development by REMB in the near term. Since the entire 5.1 million acre trust portfolio would be potentially open to development proposals from outside proponents or REMB staff under the proposal, anyone interested in the use of a trust land parcel for purposes other than development could interpret this as a potential threat to their interests.

The Whitefish neighborhood planning process may present an example of the problems associated with keeping the entire trust portfolio available for development consideration. Our understanding is that DNRC had initially intended that the Whitefish planning process would result in a generalized set of goals, policies and performance guidelines for the Whitefish lands that would be applied on a project-by project basis to potentially any lands within the entire 13,000 acres. Because DNRC initially suggested that all 13,000 acres were under consideration for potential proposals, there was a tremendous amount of uncertainty and trepidation among community residents with regard to the agency's plans for the land; the reasonable assumption was that any portion

of the 13,000 acres could be at risk from development – and because a project proponent could come forward at any time with a proposal the timeframe for decision-making could be short if the community wanted to propose an alternative implementation strategy.

The community did eventually grow to support the application of a "funnel filter" type of approach in planning the Whitefish lands; indeed, the community's own land use planner has thus far applied a substantially similar method. This consultant worked with existing GIS data and information derived from the numerous public meetings to develop a plan that identified development opportunities based on proximity to infrastructure, access constraints, physical suitability, water quality constraints, and other criteria, as well as identifying "non-development" lands based on slopes, watershed values, fire hazards, ecological sensitivities, and high value for alternative uses such as recreation, timber, and so forth. Nevertheless, because all 13,000 acres were at least potentially under consideration for development, there seems to have been a common and persistent perception that the entire set of lands are at risk and that the only way to protect trust lands that are economically or environmentally valuable to the community would be to ensure that they are protected through purchases or permanent restrictions against development. We suggest that this perception has fostered a climate of conflict that continues to hamper the process in Whitefish, and this same perception may play out in a similar fashion in other communities if it is perceived that all trust lands are available for development purposes.

We are also believe that under the proposal, REMB will place too much reliance on a proponent driven strategy – rather than proactively identifying a more limited set of lands on which projects should be identified or solicited by REMB staff based upon an a priori application of the funnel filter so as to identify those lands which are likely to provide the highest returns for the resources invested (i.e., staff time and budget). On a related note, we suggest that a disproportionate share of staff time will likely be engaged in assessing proposals that have little merit from a trust perspective. Indeed, even under the more "aggressive" strategies that are proposed in Alternatives B and C, the selection of lands for "proactive" development projects would appear to remain an essentially discretionary activity on the part of REMB staff. Given the unreasonably large land base that will still be eligible for development after the physical filter is applied, there will be an unavoidable tendency for DNRC offices to rely on project developers whose interests are not likely to coincide with the interests of the trust and its mission. By contrast, a focused set of lands would allow REMB to focus it activities on actions which are likely to bring the most value to the lands through the land use planning and entitlement process and by taking advantage of local market conditions.

Another consideration is that, in the absence of an identified and limited universe of trust assets to be considered for development, it will only be possible to evaluate individual development projects on a case-by-case, comparative basis. As a practical matter, development projects generally foreclose other opportunities for a land parcel, and, given limited staff and budgetary resources, commitments to projects also foreclose opportunities on other lands. Because projects will not be able to be evaluated in relationship to a disposition strategy for a defined subset of high-value lands, it will likely

be difficult to evaluate, from a fiduciary standpoint, the advantages or disadvantages of proceeding with any individual proposal versus seeking an alternative proposal elsewhere. Similarly, without a defined potential base of lands that would be targeted for disposition by REMB, there will be no way to evaluate REMB's performance as an asset manager overall; while REMB projects could be evaluated on their individual financial merits, these projects could not be evaluated in terms of their contribution to achieving a desirable rate of return on those lands that have the highest suitability for development.

Finally, it is difficult to understand how REMB will be able to deal objectively with the available land portfolio and focus efforts on entitling lands in a manner that will maximize benefits for the trust in the absence of a targeted portfolio; with the entire trust land base potentially open to proposals, REMB staff may spend much of their time responding to potential opportunities around the state that should not be under consideration to begin with due to low suitability or unfavorable market conditions. While the proposed approach will certainly provide REMB with the maximum degree of flexibility in selecting and developing projects, it will provide no guarantee that the agency's discretion is being exercised in a manner that is consistent with the best interests of the trust. At the same time, this strategy could make it difficult to respond to community interests and values with regard to trust lands, since the only opportunity to address community interests would be on a project-by-project basis, rather than in processes involving the prospective planning of lands that are suitable for future development. Given the size of the overall trust portfolio, there is a tremendous opportunity for REMB activities to benefit the trust, provided that sufficient investment is made up front in positioning the portfolio in an optimal fashion relative to the marketplace while considering environmental factors and community values.

We therefore suggest that, with the modifications discussed later in our comments, the funnel filter should be applied proactively to identify a meaningful subset of those trust lands that are the most highly suitable for development, and on which REMB will focus its interest and resources. Lands that are not within this subset would remain under management by other TLMD divisions for their long-term resource values, while periodic reviews (at least every five years with public comment) would allow TLMD to adjust to changing market conditions and trust management strategies). We suggest that the use of the filter mechanism in this manner would provide a number of benefits that make this approach far superior to a "reactive," proponent -driven approach in which the filter is applied on a project by project basis:

1. Pre-selection of lands will minimize conflicts over potential land development by providing certainty that other trust lands will not be considered for development use in the near term. This will allow REMB to focus efforts on resolving conflicts on those trust lands that are in fact best suited for development, and avoid conflicts on lands that are not likely to be developed in the near term.

2. Pre-selection will ensure that there will be a strong objective case for the development of a trust parcel prior to the time that a project is selected for the parcel, ensuring that projects will be identified at times and places that are most

advantageous to the trust, and that REMB will invest the state's limited staff, financial and real estate expertise on those lands most likely to result in enhanced trust revenues.

3. Pre-selection will ensure that REMB disposition proposals fit within TLMD's overall management strategy for the trust, since TLMD will be required to define in advance how trust lands should be positioned for potential development use vs. long term natural resource use.

4. Pre-selection will allow effective evaluation of REMB's performance as an asset manager, since there will be a defined asset base against which REMB's rate of return can be evaluated.

5. By focusing REMB on a reasonable subset of trust lands, communities will have advance notice of REMB's intended activities, providing an opportunity to address community values and concerns in a collaborative planning environment and to develop implementation strategies that provide multiple benefits.

B. The PEIS is unclear as to how the filter approach applies to other REMB activities, including cabin leasing and recreational licensing.

Under DNRC's current organizational framework, REMB has responsibility for managing "residential, commercial, industrial and conservation uses on school trust lands and secondary uses for lands classified as timber, agriculture and grazing uses." PEIS, p. E-3. Though the PEIS was developed in order to "identify a systematic process for proposing and evaluating proposals on school trust lands" (PEIS, p. E-5) and describes the two basic management tools at its disposal – land use authorizations (leases, licenses, and easements) and land transactions (land banking, land exchanges and land sales) – it is unclear from the PEIS how these management tools will be applied in REMB transactions to ensure that management decisions are in the best interest of the trust.

In particular, it is unclear how the agency's funnel filter approach will relate to the kinds of "special uses" already in practice, e.g. cabin site leases or recreational licenses. For example, if the agency receives a request for a cabin lease, designated as a "residential use" (PEIS, Sec. 2.3.1.5, p. 2-9), will the request be considered a project? If so, will the request run through the funnel filter process to determine whether the lease is renewed? What criteria will the agency use to determine whether lease or sale is most appropriate? It is similarly unclear how the PEIS will guide the agency in deciding whether to grant a license or other temporary use.

C. Apply an enhanced "physical environment" filter in order to identify a more realistic set of potentially developable lands.

As currently proposed in the Draft PEIS, the first stage in the filter mechanism is a "physical environment" filter that removes from consideration for development lands above an identified slope (25%) and lands located within the designated 100-year floodplain. PEIS, Sec. 2.3.1.7, p. 2-18. On its face, this appears to be a reasonable approach to identify lands that are clearly unsuitable for development based on slope and floodplain criteria, although we would strongly suggest that the department utilize more a more accurate digital elevation model (DEM) to identify lands with unfavorable slope characteristics. In the Draft PEIS, DNRC indicates that it initially relied on a 30-meter resolution DEM from the Montana State Library, which was resampled at a 90-meter resolution. Appendix C, GIS Data Report, p. 4. We suggest that even the original 30 meter resolution level is inadequate to accurately identify lands that are unsuitable for development.

We suggest that the physical environment filter could be substantially improved by including GIS layers that identify additional "disqualifying" criteria for development suitability. Although slopes and 100-year floodplains clearly represent the most commonly accepted "limits" on development suitability in a physical sense, there are a wider set of potential criteria that could operate to exclude lands from consideration for development. These include limitations such as regulatory constraints, practical constraints, economic constraints, or anticipated political or legal controversy that will render development unnecessarily costly, controversial, or difficult. Given the enormous size of the overall trust portfolio – 5.1 million acres – there are likely to be many, many parcels that have high suitability for development that are not subject to these constraints, and probably far more than could ever be made available for disposition given market considerations and limited REMB budgets and staff resources. Given the wide range of options and the limited staffing and resources available to the department, it is difficult to understand why the trust would seek to position itself to develop a particular parcel of land over the short term if that development is likely to be subject to legal challenges, significant regulatory or practical constraints, or economic limitations. While in some instances, market conditions and locational attributes will make such conflicts unavoidable, in most instances a filter that takes this information into account will do a better job of focusing REMB activities on lands that will yield the highest return per unit of staff and budget investment.

Some examples of additional criteria might be: areas with extremely limited water availability, threatened watershed areas, areas of significant wetlands and riparian zones, fire hazard areas, threatened or endangered species habitat, critical wildlife corridors, important viewsheds, or lands with special cultural or archaeological significance. We would note that most of the data and resources necessary to conduct this sort of analysis are widely available; in fact, some of this data was included in the model that DNRC utilized to rank school trust lands by locational attributes. (PEIS Appendix C, Table 1). Again, although none of these criteria necessarily would prevent the development of a particular parcel, each of these criteria render the development of a parcel significantly more costly, less practical, more controversial, or more likely to be subject to legal or political challenge, and will there require proportionally greater levels of staff resources to accomplish. By removing these lands from consideration for development at the outset

where they are associated with these features (or where they have some undesirable combination of them), trust managers can ensure that development projects will be prioritized on those portions of the trust portfolio in which development will be easier to accomplish, and that development proposals will be less likely to generate the conflict and uncertainty that may lead to lower returns to the trust at the end of the day. Of course, nothing constrains DNRC, as a trustee, from at least considering a development proposal on any trust lands. However, the application of these criteria would provide a tool to to optimize trust management decisions and to discourage proposals that are likely to be a waste of time.

We would also note that the application of an enhanced version of the physical environment filter could pre-identify, and even prioritize, a potential land base for the application of conservation-oriented management tools such as natural resource area designations, conservation easement sales, sales of development rights, leases, mitigation agreements to free up development potential on lands affected by endangered species, and so forth. See e.g., PEIS Sec. 3.2.6.2, Habitat Conservation Plan. This would provide a more accurate method of identifying conservation "priority" opportunities than the 1 mile, ½ mile, and immediate adjacency criteria (identifying lands based on proximity to existing conservation lands) that are proposed in Alternatives C, B, and A for REMB identification of priority conservation opportunities. Exclusion of less suitable areas from consideration for development may also benefit the value of other trust lands or at least limit direct and indirect costs of trust land management. For example, the exclusion of important viewsheds from immediate development consideration may enhance or preserve the value of other lands that benefit from that viewshed; similarly, by identifying hazard lands, particularly those prone to fire, the state would be in a position to proactively steer development away from areas most likely to require expensive firefighting efforts that may impact DNRC budgetary capacity.

D. Apply an enhanced "locational attributes" analysis to identify lands that are most suitable for development based on improved quantitative analysis and additional qualitative criteria.

The second stage of the filter proposed in the Draft PEIS is the "Transitional Filter," which ranks various state trust land parcels based on the "locational attributes" associated with those parcels that are commonly correlated with development suitability. PEIS Sec. 2.3.1.7, pp. 2-18 to 2-20. To provide this filter, Geodata Services, Inc. measured the proximity of each state trust land parcel to transportation infrastructure, existing development, and natural amenities was measured. Factors related to growth in housing, road density, and topography in neighborhoods surrounding each trust land parcel were also measured. These factors were utilized to categorize trust land parcels into high, medium, and low development suitability classes (1, 2, or 3), with the values averaged to determine the final class assigned to each trust land parcel. PEIS Appendix C.

While the current locational attribute model tracks where growth is occurring and identifies the common physical qualities shared by growth areas, we would note that it

fails to assign any qualitative evaluation of the desirability of growth in the areas where it is currently occurring; in other words, it adopts an entirely "passive" approach to the identification of state lands that may be appropriate for development. This design suggests that the state will not be considering the relative quality and/or desirability of the development of a given parcel of state trust lands, and that the development of state lands would occur outside the context of local planning for growth in the communities in which the lands are located.

As the manager of the largest portfolio of lands in the state, and as a state agency that is charged with the management of a perpetual trust, we suggest that DNRC should take a strong interest in the desirability of particular kinds of development, the timing of development on state trust lands, and the impacts of development on local communities, the state, and the public at large. This interest could dictate a more proactive approach which would identify trust land parcels on which development is desirable from the point of view of a number of factors, including potential economic returns to the trust, impacts on local communities, and impacts on the environment. We suggest that with some refinements, the GIS model that DNRC used in the Draft PEIS is in fact capable of a more prescriptive analysis of the "desirable" locational attributes of trust land parcels.

To review the locational attributes filter, the SI/LILP joint venture enlisted the assistance of Patricia Hernandez, who was involved with the development of the GIS model that was utilized by Geodata Services, Inc. in the Draft PEIS (Appendix C). As noted below, Ms. Hernandez identified several strengths associated with the approach proposed by DNRC, including the compilation of high quality datasets. However, Ms. Hernandez suggested that both the representation of growth related factors derived from these datasets and the model used to rate development potential should be improved. Most importantly, Ms. Hernandez pointed out that the model utilized by DNRC attempts to identify those state trust lands most likely to be developed, but stops short of further identifying the parcels most suitable for development. Ms. Hernandez suggested that further research would be needed to identify a subset of developable state trust lands where negative impacts to air and water quality, wildlife populations, local economies, and communities will be minimal. Ms. Hernandez's comments are reflected in subsections (1) and (2) of this section below.

1) Suggestions for Assessing Development Potential

a. Representation of Drivers of Growth

To accurately predict development potential, DNRC's model must accurately represent drivers of growth. In the model presented in the Draft PEIS, "Euclidian" or straight line distances are used to represent the proximity of state trust land parcels to growth related factors, such as commercial centers and hospitals. Draft PEIS Appendix C, pp. 12-20. A better measure of accessibility to services is travel time, which accounts for the location and quality of transportation corridors. We therefore suggest that proximity measures be recalculated and represented as travel time rather than straight line

distance. An example of the model results when employing travel time proximity measures versus Euclidean distances is presented in Figure 1 below.

Characteristics of the neighborhood surrounding a parcel will also affect its potential for development. In the current model, “Thiessen”, non-overlapping, irregularly shaped polygons were used to delineate neighborhoods around each state trust land parcel (see Figure 2). In reality, however, zones of influence around parcels overlap. For example, two adjacent parcels may be influenced by characteristics associated with their shared neighborhood. We therefore suggest that “Thiessen” neighborhoods be replaced with travel time zones (for example, areas within a 30 minute drive of each parcel). An example of the model results when employing travel zones versus “Thiessen” neighborhoods is presented in Figure 2. Within neighborhoods, calculations should be independent of area. For example, surrounding housing density should be measured rather than the number of households.

Lastly, drivers of growth should be represented as continuous variables rather than categorized into high, medium, and low classes. Categorization results in a loss of information that may be useful for describing differences in development potential between parcels.

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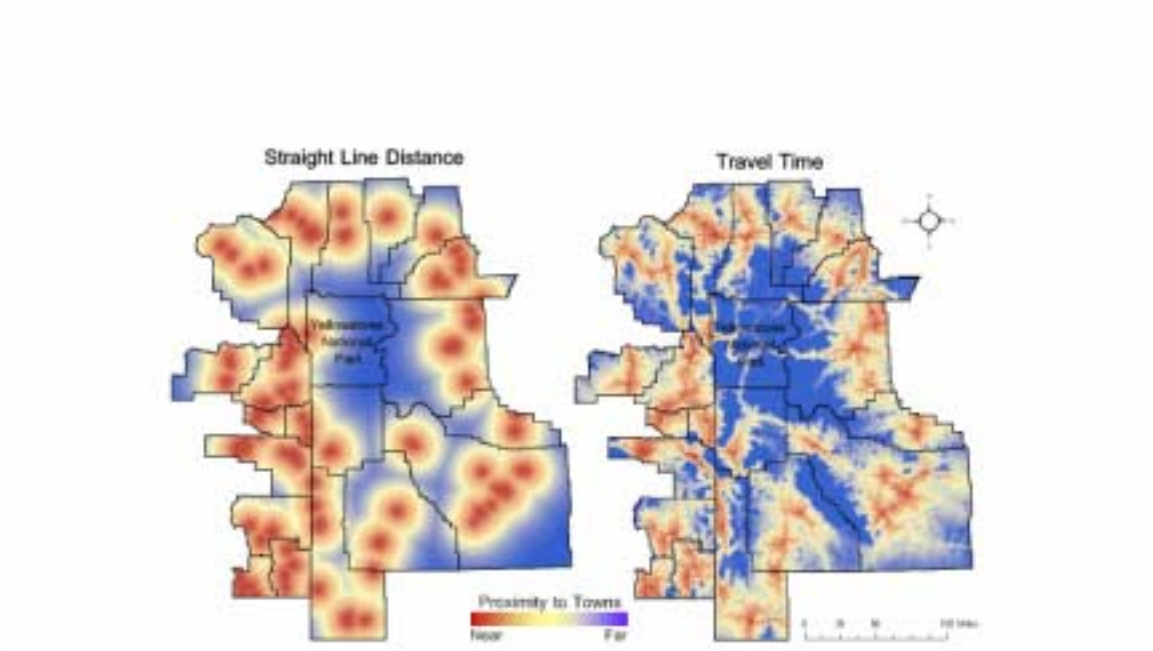

Figure 1. Model results provided by Ms. Hernandez. Straight line distances were used to represent proximity of state trust land parcels to growth related factors. Travel time is likely a more appropriate measure of accessibility, particularly in mountainous regions. A comparison of straight line versus travel time is provided for the 20 counties surrounding Yellowstone National Park.

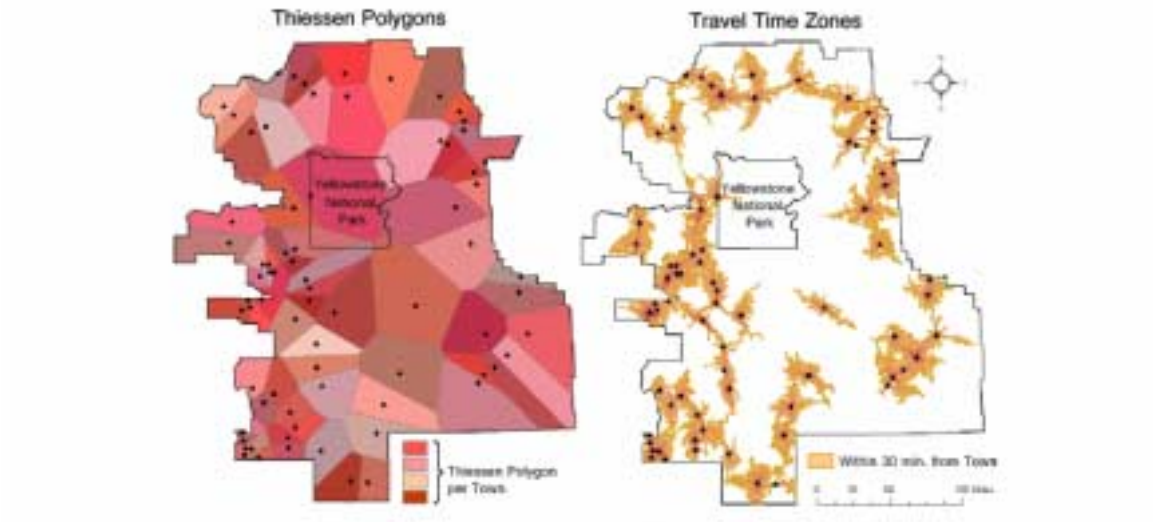

Figure 2. Model results provided by Ms. Hernandez. Thiessen polygons were used to represent neighborhoods around state trust land parcels. Travel time zones may better represent neighborhoods. A comparison of Thiessen polygons versus 30 minute travel time zones around towns is provided for the 20 counties surrounding Yellowstone.

b. Model Used to Rate Development Potential

A strong point of the current approach is that the findings from previous studies were used to guide data collection of the factors most related to growth. However, a quantitative analysis is needed to identify the drivers of growth relevant in different parts of Montana. For example, the factors influencing growth in eastern and western Montana are likely to be different. A quantitative analysis is needed to identify the combination of factors that most accurately describe growth patterns per region (i.e., east versus west).

The additive model used in the current study to rate development potential weights drivers of growth equally. This approach may result in a misidentification of the most developable parcels. In reality, some of the drivers of growth are more influential than others. For example, a study of rural housing trends in the Greater Yellowstone Area found that access to airports was less influential than access to other services, including business centers, hospitals, and schools. In addition, drivers of growth interact. Access to schools may be more important to people who live near towns than to retirees and second home owners who live at the wildland interface. In order to rate development potential, the strength and nature of these relationships should be quantified empirically.

We suggest that a random sample of private land parcels should be used to calibrate the model of development potential. These should be selected from the Montana Department of Revenue Computer Assisted Mass Appraisal System (CAMA). For these parcels, recent (i.e., 1990s) growth in housing, commercial and industrial developments should be quantified. One quarter of these parcels should be used for assessing model accuracy. For the remaining parcels, statistical techniques (generalized linear models) should be used to quantify the strength and nature of the relationships between drivers of growth and the resulting development patterns. A best overall model should be identified and used to rate the development potential of the excluded private land parcels. This will convey to DNRC staff the level of confidence that should be held in the final rating of state trust land parcels.

2) Suggestions for Incorporating Growth Management Principles

The recommended changes in the previous section will result in a more accurate portrayal of which state trust lands are most developable. However, only a subset of these lands are in fact the most suitable for development; as discussed in Section III(C) of our comments, given the enormous size of the available trust portfolio, it is difficult to understand why the trust should not focus its efforts on those parcels that are the most suitable for development. We therefore recommend that growth management principles be incorporated into this study to minimize the environmental and economic costs to local governments and communities.

a. Overview of Potential Development Impacts

Land uses are known to impact ecological processes through the introduction of new species, alteration of biotic interactions, changes in habitat extent and juxtaposition,

changes to disturbance regimes, biomass changes, and effects on air and water quality, light quality, and noise pollution. In addition to local ecological effects, development may alter ecological processes on adjacent and even distant public lands

Ecological and socio-economic impacts are often closely related. On-site septic systems can overflow, leading to water quality problems. Long commute distances can result in more gasoline burned, increasing air pollution. The economic consequences of development are related largely to the costs of community services. Sprawling development can increase demands for new schools, fire stations, roads, sewer, water and utility lines. Sprawling development is often a net drain on local government budgets, by increasing costs of services beyond the new revenues that are generated in property taxes

b. Assigning a Growth Management Rating

To account for these potential costs, we suggest that all state trust land parcels be assigned a growth management rating, depicting the extent to which each parcel conforms to growth management principles. The most suitable parcels for development will be those with a high potential for growth and a high growth management rating. This step would allow DNRC staff to maximize profit while minimizing negative environmental and socio-economic impacts. The application of growth management rating seems especially important in a PEIS intended to avoid, minimize or mitigate environmental impact.

The growth management rating should account for adjacency to existing development and the protection of natural amenities and resources. Concentrated development patterns are also frequently preferable since isolated developments encourage further subdivision and have large impacts on the environment and cost of community services. A high growth management rating could therefore be assigned to state trust lands that:

- are proximate to towns;
- occur in neighborhoods that already support high housing densities;
- are distant from public nature reserves and conservation easements;
- are distant from riparian areas and other rare or declining habitats;
- do not overlap with critical wildlife habitat; and
- comprise small isolated parcels rather than large contiguous blocks that are more suitable for wildlife habitat and natural resource extraction.

E. Apply an enhanced marketing filter to ensure that the universe of lands considered for development bears a reasonable relationship to the trust's potential "share" of development

The third step in the Draft PEIS's proposed filter process is a "market filter," which attempts to assess the economic/demographic suitability of lands in each land office for development by estimating the demand for trust lands over the next twenty years. PEIS Sec. 2.3.1.7, p. 2-20. The "market filter" is based primarily on two studies provided in Appendices B and D to the Draft PEIS: a May 2004 economic study provided by Dr. Paul Polzin (PEIS Appendix B), and an April 2004 land use forecast, financial

returns, and economic impact study provided by David H. Jackson (PEIS Appendix D). Using data from the Polzin economic study, the Jackson study projected expected growth in residential, commercial and industrial acreage in each land office region. These growth estimates were then used to derive acreage ranges for potential growth on trust lands based on the ratio of trust land ownership to private land ownership in each region.

We agree that the "filter" process should incorporate an analysis of projected market demand for trust land in order to quantify and identify lands that are suitable for development. However, the "market filter" that is proposed to be applied in the Draft PEIS rests centrally on the assumption that the trust should capture its "fair share" of growth in each land office region. As discussed in Section II, it is not at all clear that the capture of a "fair share" of growth in each land office region would in fact be consistent with the best interests of the trust; it might therefore be advisable for DNRC to revisit this assumption in the development of the "market filter" such that the filter incorporates not only potential market demand but also DNRC's objectives as a trust manager in disposing of trust lands for development.

In addition, the "market filter" developed by the Polzin and Jackson studies is quite simplistic, predicting market share on a land-office-wide basis using projected incomes, population, and a loose calculation based on proportional ownership of land and past development patterns. While this may provide a rough estimate, we would suggest that given the limited resources of the department that can be applied to real estate project development statewide – and the very significant revenue implications associated with the selection of optimal real estate developments for the trust as a whole – a far more accurate characterization of market demand for trust lands is an essential component of a program that will focus the REMB on disposition opportunities that maximize returns to the trust. Therefore, if the state is serious about pursuing revenue opportunities from commercial and residential development, it should rely on a much more sophisticated, focused analysis of real estate sales data and absorption rates, particularly in those areas deemed highly suitable for development. This is a missing element of the Whitefish project that the joint venture may be able to provide to assist that planning effort, and might also serve to guide the final PEIS. We are currently exploring the development of a study to assess market conditions in the relevant market area for the Whitefish lands, along with market absorption rates for various types of development. This study may also enable development of analytical tools that could be applied statewide.

Regardless, our review suggests that there are also several significant flaws in the Polzin and Jackson studies that tend to challenge the predictive value of these studies in anticipating demand for trust lands even at a gross level.

1) Key economic trends in Montana's economy are overlooked.

Although the data presented in the Polzin study seem to provide a reasonable overall picture of the general trends in Montana's economy at the land office level and are generally accurate,[6] the Polzin study is essentially descriptive in nature; i.e., there is

[6] Some of Polzin's data is now out of date. Polzin uses the 2000 data from Department of Commerce's REIS database; however, the 2002 data has been released.

no attempt to analyze the trends identified in the data, and, more importantly, there is no attempt to relate these trends to Montana's land markets and corresponding real estate values. This analysis would seem to be germane in the context of the Draft PEIS, particularly given that the study is ultimately used in the Jackson study to derive the growth in developed land acreage estimates that are presented in Appendix D. We would note that area MLS databases and Clark Wheeler's database could provide extensive information on land sales and values by region, size and use.

Regardless, several of Polzin's selected indicators also appear to require further justification and/or analysis. For example, Polzin uses per capita income, and not earnings per job, to characterize how the "average resident" is faring. We note that Polzin's data suggests that per capita income in the state is rising while average earnings per job are falling. The difference between the two is most likely non-labor income, which may not be that well distributed across the population. Non-labor income generally consists of two components: money earned from investments and transfer payments to individuals, the latter being primarily retirement income. Data available to SI suggests that in Montana, 39% of all personal income in 2000 was non-labor income, and that taken as a whole, non-labor income has comprised approximately 56% of all new income in the state since 1970.[7] As a result, the failure of the study to analyze non-labor income represents a significant oversight; at the same time, the substantial influence of non-labor income on per capita income suggests that average earnings per job would be a better indicator of how the average working individual is faring and should be taken into consideration.

Polzin also appears to distort the notion of "basic" industries, i.e., the idea that some industries are export oriented and bring new dollars into an area and are therefore more valuable than "non-basic" industries (which only circulate dollars within an area). Polzin provides an examination for only his list of 7 "basic" industries. We suggest that all industries have the potential to be basic and non-basic and, in practice, are a mix. For example, mining is classically basic because it generally exports minerals out of state, but gravel pits, also classified as mining, are usually considered non-basic as they generally cater to local markets. By reducing all industry analysis to the 7 "basic" industries, Polzin's study fails to address or analyze the largest and fastest growing industry in Montana – services – because services apparently do not qualify as "basic" industries. This characterization results in a significant distortion of the state's economy; in 2000, for example, services accounted for approximately 18% of all personal income in the state, and has comprised 28% of all new income generated in Montana from 1970.[8]

The limitations in the Polzin study are inherited by the Jackson study's predictions of future growth in commercial, industrial and residential uses in each land office region, since the Jackson study assumes that growth is a function of income and population. We would suggest that demand for land may be related not only to per capita income levels, but also whether that income is derived from labor or non-labor sources. Because the income estimates derived from the Polzin study do not differentiate between

[7] Data derived from Economic Profile System (EPS) database, available at http://www.sonoran.org/eps
[8] Data derived from EPS database, note 6, *supra*.

these types of income, Jackson's overall market analysis may be skewed as a result. Both studies could be significantly improved by addressing these issues.

2) Past development patterns are not necessarily predictive and should not necessarily be used to guide future growth.

A key assumption of the Jackson study is that future development patterns will correspond to past development patterns. Based on this assumption, the model extrapolates predicted future growth and market demand by determining what amount of developed land area is in commercial, industrial, or residential use in each land office region and multiplying this information with population growth projections to arrive at an estimate for predicted growth in developed land area for each use category.

One particularly troubling assumption in this model is that the minimum "resolution" for residential development was development at densities of between 1 house to 1 acre and 1 house to 25 acres; i.e., the model could not predict residential development at development densities higher than 1 to 1 or lower than 1 to 25. PEIS Appendix D, p. 7. The model appears to have compensated for this limitation by simply discarding densities that fall outside this range; as such, all residential development on trust lands is presumed to occur at a density of between 1 to 1 or 1 to 25 acres. Although there appears to be a substantial market at the current time for residential development at this density, it is not the only density level at which residential development is occurring. We would note that Clark Wheeler is currently tracking development at densities in the 100-640 acre range where there is also a great deal of activity; at the same time, development in urban and near-urban areas tends to occur at densities higher than 1 to 1 acre.

More importantly, however, there is no reason to necessarily assume that this is in fact the most desirable form of development either for purposes of maximizing economic returns to the trust or in terms of its benefits and costs to local communities and the environment. As previously noted in section III(B) of our comments, we would suggest that DNRC should take a substantial interest in the quality of development on state lands and the impacts of that development on local communities. Many studies have suggested that this level of residential development is one of the least desirable from the point of view of infrastructure costs to local communities, land consumption, and environmental impacts. By defining residential development at the undesirable levels assumed in the PEIS, DNRC is overlooking alternative disposition strategies – such as "cluster" developments, the utilization of more advanced land use planning tools, and tools such as density transfers, conservation easements, and the like – which could potentially improve the quality of development, improve economic returns from land development, and minimize environmental impacts associated with that development.

3) The Trust cannot necessarily attain a proportionate share of growth in each region.

A primary assumption made by DNRC in the Draft PEIS is that the trust is "entitled" to capture a proportionate "share" of the growth that is anticipated to occur in each land office region. PEIS Sec. 2.3.1.4, p. 2-8 to 2-9. To quantify the trust's potential

"share" of future development, the Jackson study multiplied the estimates for anticipated growth in commercial, industrial, and residential development acreage in each region by the ratio of trust land acreage to private land acreage in that region to arrive at an estimate of growth that could occur on trust lands. PEIS Table 2-3, p. 2-9.

As noted elsewhere below, it is not clear that capturing a proportionate share of growth in each region would be in the best interests of the trust. Nonetheless, the methodology utilized by the Jackson study does not seem to provide a particularly reliable method of predicting the trust's potential share of future growth. As a general matter (and as DNRC's own locational attributes model itself suggests), growth tends to occur in areas near existing development and infrastructure; in addition, growth is not uniformly distributed within each region, but is instead concentrated in smaller, high-growth areas. As noted in the Polzin study, growth is also not equally distributed between land regions; at least one region is in fact experiencing negative growth over all. See PEIS Appendix B, Eastern Land Office. Nor are state trust lands and private lands equally "available" for development in every circumstance; many lands will have physical characteristics that do not lend themselves to development or will be subject to other practical limitations. For example, the procedural requirements associated with the disposal of state trust lands may make these lands impractical to develop (such as limitations on joint venture arrangements, right-of-way grants, infrastructure development, financing arrangements, and public auction requirements); alternatively, many private lands may held in large blocks by owners who do not intend to develop those lands, or who have restricted the types of development that can occur on those lands. By assuming that the trust will capture a proportionate share of growth in each region, DNRC is assuming that trust lands will be always equally well positioned for development as compared to private lands; it is also assuming that all private lands in the region are in fact available for development.

The uneven distribution of state trust lands and private lands, the proximity of these lands to existing growth, and the varying characteristics associated with these lands should logically lead to the result that in some areas, a higher proportion of the lands that are close to existing infrastructure and that are available for development might be trust lands, in which case the trust might expect that its lands could bear a proportionately larger share of growth than the ratio of state trust to private lands in the region as a whole. In other areas, the majority of lands that meet these characteristics may be private lands, in which case the trust cannot expect a proportionate share of growth.

By developing the growth projections for the Draft PEIS in a manner that fails to differentiate between high and low growth areas in the land office regions, between the relative positioning of trust lands with regard to development, and between the various development characteristics that will influence the suitability of those lands for development, these growth projections are likely to be highly inaccurate. At the same time, by developing disposition alternatives on the basis of these projections, DNRC would seem to be increasing the risk that development on state trust lands will be focused in areas where development should not occur and where it will fail to maximize returns especially as a function of unit cost of investment (i.e. staff and budget).

4) Capturing a proportionate share of growth may not be in the best interests of the trust.

DNRC takes as a central premise that the trust should in fact be attempting to capture its "fair share" of anticipated growth in commercial, industrial and residential development in each land office area, as each of the alternatives other than the Alternative A "no-action" alternative are built on the capture of a proportionate share, by land office region, of anticipated growth in these land uses. PEIS Sec. 2.3.1.4, p. 2-6. As noted elsewhere above, this appears to imply that commercial, industrial and/or residential development of trust lands is the highest and best use of trust land unless the proposed filter process demonstrates otherwise.

We suggest that these assumptions are overly broad and need to be evaluated more closely to determine if development for commercial, industrial and/or residential use on a "fair share" basis is in fact in the best interests of the trust. Although commercial, industrial and/or residential development may produce higher returns to the trust over the short term, it is not clear that this will always be the case over the long term, particularly where irretrievable commitments of trust assets are involved (such as disposition of fee title for residential uses). The timing of dispositions for these purposes would also presumably have important implications for the return to the trust over the long term, as a deferred sale of land for residential use may yield higher returns if the land can be later entitled at higher densities or after additional appreciation has occurred.

With this in mind, it may not be in the best interests of the trust to irretrievably commit trust resources to commercial, industrial, or residential uses at the same rate as private lands in the same area. Without further analysis, we suggest that there is substantial risk that this strategy will lead to the disposal of trust lands at times when the returns from those disposals will be sub-optimal, particularly given that the REMB as a whole has limited real estate development expertise and tends to rely on outside proponents to identify development opportunities.

Revisiting the assumptions made with regard to the capture of a "fair share" in each land office area seems particularly important given the limited resources available to the TLMD to bring land out for development. As noted elsewhere above, even under the most "aggressive" strategy identified in the PEIS, DNRC estimates that it will dispose of only one half of one percent of the overall trust portfolio for commercial, industrial and residential use over the next twenty years. Given these constraints, the TLMD would seem to be well served to expend its limited resources on the disposal of lands for which the potential for returns to the trust are at their highest. In light of the highly differential value of trust lands between land offices, obtaining a proportionate share of growth in each land office does not seem likely to yield the highest returns for the trust.

F. Develop "guiding principles" to project-level filters to mitigate growth impacts on communities, improve the quality of development, and emphasize collaborative approaches to land use planning and project development.

As noted elsewhere above, we suggest that the first three stages of the funnel filter should be applied proactively to identify a meaningful subset of trust lands on which

REMB will focus its resources as a real estate manager. Using this subset of lands, we suggest that REMB should then work to identify, evaluate, and develop project opportunities using the remaining "filters" proposed in the Draft PEIS. As noted in the Draft PEIS, the remaining filters are essentially more project-specific, applying a "physical suitability filter" that evaluates the proximity and availability of infrastructure to specific trust land parcels on a project-specific basis; a "regulatory filter" that evaluates the effect of state, federal and local land use and environmental regulations on trust land parcels on a project-specific basis; a "selection filter" that prioritizes identified project opportunities based on real estate analyses, fiscal and staffing considerations, analysis of costs versus returns, perceived market demands, and project timelines; and finally, a "project filter" in which projects would be subject to local government review and approval (such as zoning, mitigation requirements, design standards, and so forth). PEIS Sec. 2.3.1.7, p. 2-20 to 2-23.

While the remaining "filters" proposed in the Draft PEIS clearly provide the steps necessary to identify, evaluate, and develop specific projects on trust lands, DNRC does not seem to identify any overall philosophy that REMB will utilize when applying the remaining filters. The lack of any guiding principles for the application of these filters is a significant limitation of the filter approach as proposed in the Draft PEIS, as it (1) fails to provide significant guidance as to how projects will be selected and prioritized within the filter results, and (2) fails to provide any criteria for REMB projects as a whole by which the outcome of a given project (and the success or failure of filter analyses as an accurate assessment of opportunities) can be evaluated.

We suggest that DNRC's filter approach could be significantly strengthened by developing a set of "guiding principles" for project development on trust lands that could be applied at appropriate stages of project identification, evaluation, selection, and development. These principles could address both desired trust outcomes as well as desired outcomes for the economic and environmental impacts of trust land development on both a local and state wide basis. By identifying a set of guiding principles, DNRC could enhance both its evaluations of project opportunities as well as the administrative record in support of the development or non-development of a given parcel of trust lands.

For example, trust land development activities will inevitably impose public costs in the form of public infrastructure and services needs, even as they will potentially generate new revenues by expanding the local tax base; however, the accounting and recovery of these costs may not be adequately addressed by local subdivision regulations in many Montana communities. With this in mind, DNRC might thus adopt as a "guiding principle" that anticipated tax revenues from new development on trust lands should be sufficient to pay for the costs of the public infrastructure and services that are required to support that development. In accordance with this principle, as a part of applying the proposed "physical suitability filter" that evaluates the proximity and availability of infrastructure for a given trust land parcel, DNRC could regularly conduct an assessment of the potential fiscal impacts of a proposed development on local communities.

Similarly, DNRC might adopt a principle that REMB will work proactively with local governments to develop land use plans for trust lands that meet trust objectives while satisfying local needs. As such, when working through the "regulation filter" and

"project filters" that incorporate consideration for local land use and environmental regulations, REMB would actively participate in the development of local plans that affect trust lands that have been identified as having a high potential for development. By engaging actively in land use planning processes across the state, REMB might be in a better position to proactively secure entitlements for trust lands that meet the needs of the trust and the local community, enhancing the future value of those lands for development while ensuring that developments on trust lands meet community needs and expectations and will face a minimum of conflicts over land use (conflicts that might well occur if trust lands are left behind in planning processes and are treated as de facto "open space"). Increased certainty, coupled with entitlements, should also enhance the attractiveness of trust parcels in an auction environment.

DNRC could also utilize these principles to ensure that REMB projects meet the various objectives of DNRC's mission. For example, DNRC's mission includes (in addition to the generation of revenues for the trust beneficiaries) consideration for the environmental impacts of trust management activities. DNRC might therefore adopt a principle that any development on trust lands will analyze these impacts and will be designed to avoid, minimize, or mitigate adverse and/or cumulative impacts on water quality, wildlife corridors and wildlife habitat, aesthetics, and so forth. This assessment would assist DNRC in meeting the requirements of its mission, improving the quality of developments on trust lands, and minimizing potential opposition from conservation interests and other interested parties to a development project.

IV. The Draft PEIS Does Not Adequately Evaluate the Potential Economic Impacts and Environmental Impacts Associated with the Alternatives

A. Returns to the trust fund under the various alternatives are not accurately characterized.

The estimated returns to the trust fund under the various alternatives that are presented in the Draft PEIS are also largely based on the Jackson study. The Jackson study attempts to estimate the "rate of return on equity" for Alternatives A, B and C based on the projected growth in commercial, industrial, and residential land use categories and the trust's anticipated share of that growth under the various alternatives; it also provides calculations of rate of return for Alternatives B and C with and without the proposed $500,000 and $1,000,000 budget increases for up-front development costs. PEIS Appendix C, pp. 12-16; PEIS Sec. 2.9, pp. 2-54 to 2-55.

As noted in Section III(E) of our comments, there are several significant issues associated with the Polzin and Jackson economic studies that call into question the accuracy of the growth projections for the various land use categories; in addition, we have questioned the assumptions made by DNRC with regard to the desirability of the trust's full participation in the growth in these categories. Depending on the results of a revised economic study and DNRC's judgments regarding the appropriate level of trust participation, the current revenue projections could vary widely from the current estimates. We therefore suggest that the revenue projections for the various alternatives should be revisited based on improved growth estimates and revised assumptions regarding the trust's potential "share" of this growth.

With this in mind, however, we also had some difficulty understanding the rationale behind the method for calculating rates of return that is described in the study:

> Equity is estimated by calculating the market value of the land developed over the planning horizon. Since this value reflects price changes as well as changes in yearly quantities, it was calculated by averaging the values in the first and second half of the planning horizon. Gross income is estimated by calculating the total gross income from the mix of leases and land sales over the planning period and then converting it to an average annual amount.

PEIS Appendix D, p. 13. As we understand this statement, the "equity" against which REMB's rate of return is measured is thus simply the universe of lands that will be developed by REMB within the planning horizon, which is in turn defined by the philosophy of land disposition defined in the chosen alternative – aggressive disposition, active disposition, and near-status-quo disposition. Income from this "equity" value is then simply defined as the average value derived from selling this universe of lands over the same planning horizon; costs to generate this income are simply the current land department budget plus the projected increases in budget required to implement the alternatives.

It appears that these assumptions have resulted in a scenario in which the estimated rate of return appears to increase as a function of the amount of land included in the universe of lands to be developed over the planning horizon, independent of any other variables. The rate of return obviously fluctuates as a result of the land department's investment in new infrastructure, which increases the value of the land when it is sold relative to the raw land value (which the Jackson study establishes as 1/3 of the developed value). This accounts for the differences in the rate of return between alternatives B-1 and B-2 and C-1 and C-2.[9] However, the variations in the rate of return between alternatives A, B-1, and C-1 seem to be primarily related to the fact that for a disproportionately small increase in overall budget, the land department could double the amount of land sold. Because the "equity" and "income" values are based on average values and vary from alternative to alternative in direct relationship to the amount of land sold, the primary difference between the alternatives is thus the relationship between the land department budget and the revenues generated. As such, the model would seem to suggest that the more land that is sold, the higher the overall "rate of return."

If we have understood the model correctly, a central problem with this model is that it is essentially designed to measure the wrong thing. Because the land department is largely funded from legislative appropriations, the budget of the land department bears no meaningful relationship to the "rate of return" being earned by the trust on its overall portfolio (even if budgetary considerations are a legitimate consideration when making

[9] Note that Alternatives B-1 and B-2 and C-1 and C-2 in the Jackson study are actually variations on PEIS Alternatives B and C; the alternatives labeled as B-1 and C-1 in the body of the PEIS are not evaluated in the study. The different numbering conventions between the PEIS and Appendix D are somewhat confusing and should be clarified.

trust management decisions). The actual "rate of return" earned by the trust is related to the amount of revenue generated each year from the trust portfolio as compared to the value of the portfolio. However, by allowing the "equity" value to vary depending on the amount of land that is anticipated to be sold under the various alternatives, the Jackson study muddies the water with regard to evaluating the revenues generated from any fixed set of lands that are suitable for development, and instead focuses on the cost of producing those revenues – a measure which is essentially irrelevant for purposes of calculating the real "rate of return." The problem with this approach is made clear by the fact that, assuming that the land department could always sell a proportionately larger amount of land than the budget increase required to complete the sale, the Jackson model would seem to predict that the highest "rate of return" (and thus the "best" investment strategy) would be achieved by selling the entire trust portfolio over a very short period.

The model used to calculate potential revenues from land sales is equally problematic, since it utilizes average values for lands in each land office that do not account for the substantial variations in land values that occur within each land office based on location and amenities. This approach completely overlooks the critical importance of these variations in land valuation in designing a disposition strategy that will maximize revenues; for example, if the trust disposed of only the highest-value parcels (presumably those located nearest to existing development and infrastructure and in the highest-value land markets), it would achieve much higher rates of return than if it sold parcels throughout each land office region without regard to the relative value of those parcels. Similarly, this approach ignores the substantial variations in land value appreciation rates, which also would be of critical importance to an investment and disposition strategy that maximizes revenues; by prioritizing the timing of trust land dispositions to take advantage of land value appreciation, the trust could presumably achieve much higher rates of return than if parcels are sold without regard to this information.

Similarly, although the economic analysis broadly projects the rates of return to the trust of more or less aggressive management "philosophies," it does not provide any comparative analysis of the implications of different trust land disposition tools – for example, leases versus sales versus sales of development rights, taking the use of certain disposition strategies as a given rather than attempting to compare the economic results from different strategies. However, this distinction is extremely significant with regard to the amount of annual revenue that is generated by the trust. For example, lease revenues are "distributable," which means that legislature can make those funds available directly to the beneficiaries through the budgeting process. On the other hand, revenues from the sale of land (other than lands sold under the land banking program) are placed in a permanent fund, the interest from which is made available to beneficiaries through the budgeting process. These differences in budgetary treatment could also affect disposition strategies, since one can easily imagine situations in which it might make objective economic sense to sell lands, but because of the difference between distributable lease revenue versus interest on the permanent fund, it might make more budgetary sense to retain them.

Other serious shortcomings associated with the predictions of projected "rates of return" include the fact that the Jackson study utilizes Montana Department of Revenue

data as the basis for the valuation of commercial, industrial, and residential land uses. PEIS Appendix D, pp. 2-7. In our experience, these data can diverge significantly from actual market prices for lands in these categories; we again note that MLS database information and Clark Wheeler's database information is available with permission and would likely provide a more accurate characterization of land valuation.

We suggest that a better method for calculating "rates of return" under the various alternatives would be to use the "funnel filter" process to identify a subset of lands that are considered highly suitable for development along with a reasonable estimate of the amount of land that the TLMD should seek to dispose of given the overall investment objectives of the TLMD. Valuation information for this subset of land could then be used to derive an overall "equity" value for the amount of land that the TLMD should dispose of over the planning horizon. "Rates of return" for alternatives could then be calculated against this overall "equity" value, but utilizing much more sophisticated projections that account for variations in land value and appreciation rates, utilize current market data, and provide better guidance for the development of disposition strategies.

B. Conservation of a portion of trust lands will not necessarily lead to reduced rates of return.

Another key assumption that appears to be used in evaluating the various alternatives proposed in the Draft PEIS is that the conservation of some proportion of the trust lands that are made available for residential development will lead to reduced rates of return to the trust. In two of the proposed alternatives, Alternative B-1 and Alternative C-1, DNRC proposes that it will attempt to conserve up to half of the trust lands that would otherwise be made available for residential development.

DNRC assumes that the only mechanism for accomplishing this goal is through the sale of conservation easements to outside parties, which DNRC identifies as generally producing only half the rate of return that would be associated with fee title sales. As an initial matter, we would note that Montana law currently prohibits the widespread sale of conservation easements, such that this tool may not in fact be available to accomplish DNRC's stated objectives. Regardless, however, there are a variety of other disposition mechanisms available that could be used to increase the rate of return from conservation dispositions. For example, "cluster" developments, which concentrate development that will occur on several different parcels in a small area while leaving the majority of each parcel in open space, can accomplish conservation of the vast majority of "developed" land while not necessarily decreasing the density (or the price) returned for the land.

At the same time, there may be cogent reasons to "conserve" a substantial portion of the lands that may be designated for conservation use under these alternatives regardless of whether the lands are actually disposed in conservation easements or other mechanisms; some of these lands may have long-term asset value for other uses that are not incompatible with conservation (such as sustainable timber harvest or grazing purposes), they may be needed for mitigation use to enable the development of the other portions of the state trust lands or to establish wildfire buffers to protect developments, or the protection of those lands may enhance the value of surrounding lands for development by protecting viewsheds or public recreation areas.

We therefore suggest that DNRC should consider opportunities to utilize alternative disposition strategies as a method for increasing returns for land that would be "conserved" as a result of the proposal, as well as accounting for other reasons or mechanisms that may lead to the "conservation" of those lands in any event. We suggest that if DNRC was to consider these types of uses or alternative disposition strategies in evaluating the potential "value" that could be obtained by the trust from the conservation lands, DNRC might be able to assume, if not demonstrate, substantially higher rates of return from the "conservation" portion of the lands considered in these alternatives.

C. The economic and environmental impacts associated with the various alternatives require further analysis.

The problems associated with the Jackson study's projections of trust revenues are accompanied by similar issues associated with the study's projections of economic impacts on local communities and tax revenues. For example, the study's bare assumption that sale of lands for residential uses will necessarily increase taxes in a positive way ignores the extensive cost of services literature and any accounting of the costs of delivering infrastructure and providing ongoing services. PEIS Appendix D, p. 19. Similarly, because it erases any distinctions between different disposition strategies, including distinctions between land valuation, timing, and methods of disposition, the model does not account for the impacts that different disposition strategies may have on local communities.

However, a more significant issue in this regard may be related to another central assumption of both the PEIS and the Jackson study: that growth and environmental impacts will occur whether the state lands are available for development or not. PEIS Sec. 2.8, p. 2-52. Based on this assumption, DNRC concludes that its actions, particularly with regard to commercial and residential uses, will have little to no impact on the environment or the economies of local communities.

As an initial matter, it is not at all clear that the availability or non-availability of state trust lands has no effect on local land markets. As the largest single land owner in the state, basic economic principles would suggest that the availability or non-availability of DNRC lands for development could have a significant impact on land values. At the same time, the availability of land and associated land pricing may have a significant influence on local growth rates and the demand for development land.

A more significant potential impact of the development of school trust lands, however, is the vital economic and environmental role that these lands may be playing in communities and ecosystems across the state of Montana. DNRC is undoubtedly correct in concluding that, given that even the most aggressive disposition scenario would affect less than 1% of the overall trust holdings, the impact of this development is unlikely to produce significant statewide impacts. However, impacts to local areas could be extremely significant depending on how much development occurs, and, perhaps more importantly, where this development occurs.

Aside from the obvious ranching, mining and agricultural opportunities associated with trust lands, state trust lands that are currently undeveloped may be serving as open space or recreational assets in communities that are attracting growth; they may also have unique environmental values associated with them that do not occur on adjacent private or federal lands. These lands may also provide other important values, such as providing watershed services, protecting groundwater sources, providing wildlife habitat and movement corridors, or protecting viewsheds for existing developments. To the extent that state trust lands are serving in this role in a given area, the development of those lands could significantly impact environmental values, growth patterns, and even growth rates in those communities.

For example, the National Parks Conservation Association recently commissioned a study of the economic role that Glacier National Park plays in the Flathead Valley; in the report on the study, "Gateway to Glacier: the Emerging Economy of Flathead County," Dr. Larry Swanson of the Center for the Rocky Mountain West compared the economy of the Flathead valley and with similarly situated communities nationwide.[10] He found that in Flathead County, like other communities located near a national park or natural area, the quality of life and the spectacular natural environment are the major economic drivers. While the study does not quantify the dollar value of open spaces and the landscape, the correlation between a healthy economy and healthy environment is significant. Similarly, the Sonoran Institute recently released a study entitled "Prosperity in the 21st Century West: The Role of Protected Public Lands" in which economists Ray Rasker and Ben Alexander examined the relationship between public lands management in the west (national parks, national forests, wildlife refuges, monuments, conservation areas and Bureau of Land Management Lands) and the economic health of neighboring communities.[11] The study found that "protected natural places are vital economic assets for those local economies in the West that are prospering most" though the degree to which a community can benefit from land protection depends largely on additional economic factors such as access to an airport and workforce education level. Though school trust lands were not specifically included in the land base considered by either of these studies, we suggest that trust lands may be playing a similar role in some Montana communities. For that reason, the state should carefully evaluate, both as a landowner and governmental entity, the impact of development decisions.

More importantly, however, this assumption fails to account for the influence that the location and timing of certain types of development may have on growth patterns in a community as a whole. For example, it is well-documented that the development of commercial uses at the edge of existing communities may negatively affect the viability of commercial uses in traditional downtown areas and may affect economic growth in the community as a whole. Similarly, the development of isolated parcels of land for residential use may influence the development of other lands in the area by developing roads and other infrastructure that will trigger the sale and development of other lands in the same area even if this is undesirable, or may increase infrastructure costs to local communities that may limit other development opportunities.

[10] Gateway to Glacier: the Emerging Economy of Flathead County, National Parks Conservation Association (2003).
[11] Rasker, note 4, *supra*.

The potential influence of development of state trust lands on both local environmental values and local economies – and in particular, the influence of the location, type, and timing of this development – only underlines the importance of the development of a set of "guiding principles" for trust land development as suggested in Section III(F) of our comments. By adopting these principles, DNRC could provide some assurance that the impacts of the development of state trust lands will in fact be as limited as is suggested by the Draft PEIS.

V. Conclusion

We suggest that, given the concerns identified with the various alternatives proposed in the Draft PEIS, and the need for further information and analysis to guide REMB's proposed disposition process, the ongoing Whitefish planning effort may produce additional experience and analysis that would provide valuable insight and information for the statewide planning effort. The participants in the Whitefish planning effort are currently looking at ways to analyze critical issues such as access to infrastructure, the cost of services, the need, market for, and absorption rates associated with different types of real estate product based on local sales data, methods of phasing and prioritizing development, and disposition methods for both development and non-development uses, as well as looking at ways to develop conservation, long term resource management, and other revenue generating management options that benefit the local community and the trust.

With this in mind, we suggest that DNRC might be well served to delay preparation of a final PEIS until the results of these additional analyses are available. Regardless, given the opportunities for improving the planning process as provided herein, we recommend that the agency develop an additional alternative that does the following:

- Establishes a clear, measurable goal that accomplishes the agency's mission and purpose.

- Develops a filter process that results in the identification of a limited set of lands that are highly suitable for development. This filter process would apply versions of the "physical environment," "transitional," and "market" filters that would be enhanced as we have previously described, and would therefore remove additional categories of land from consideration for development, identify lands with high development suitability based on somewhat more detailed locational attributes and additional growth management criteria, and employ a more sophisticated market analysis to arrive at a realistic picture of the trust's potential and desired share of future growth.

- Enhances the proposed "project level" filters with a set of guiding principles for project development on trust lands that could be applied at appropriate stages of project identification, evaluation, selection, and development to ensure quality development on trust lands that will enhance both local communities and the trust. These principles would emphasize working proactively with local governments to

achieve solutions that benefit the trust while accounting for the needs and interests of local communities.

- Provides well-researched, thoughtful criteria for choosing among disposition strategies and developing disposition plans that prioritize the disposition of lands within defined planning time frames.

- Provides for a monitoring program with provisions for regular reporting and measured achievement that ensures the programmatic plan actions are in the best interest of the trust.

We greatly appreciate your consideration of these comments, and look forward to the opportunity to work with you further in the development of this critically important plan. If you have any questions or concerns, please do not hesitate to contact Diane Conradi at (406) 862-7885 or Peter Culp at (602) 393-4310.

Very truly yours,

Peter W. Culp
Project Manager/Attorney for Programs

Diane Conradi
Project Manager
State Trust Lands Program
Sonoran Institute

Cc: Andy Laurenzi, Program Director
Dennis Glick, Northern Rockies Program Director
Dr. Armando Carbonell, Lincoln Institute of Land Policy

TO: Trust Land Management Division of the Montana Department of Natural Resources and Conservation

FROM: Jody Sanford, Associate Planner
City of Bozeman, Department of Planning and Community Development

RE: Comments on the Draft Real Estate Management Programmatic Environmental Impact Statement

DATE: August 15, 2004

Thank you very much for the opportunity to comment on the June 21, 2004 draft of the Draft Real Estate Management Programmatic Environmental Impact Statement. My comments are provided on behalf of the Bozeman Department of Planning and Community Development. My comments are addressed towards specific sections of the document, and are presented in numeric order based on section number.

Thank you very much for the opportunity to comment on the June 21, 2004 draft of the Draft Real Estate Management Programmatic Environmental Impact Statement. My comments are provided on behalf of the Bozeman Department of Planning and Community Development. My comments are addressed towards specific sections of the document, and are presented in numeric order based on section number.

1. Section 2.3.1.4 - Relationship to Community Growth (Page 2-9)

We find the notion that Trust Lands would capture a direct proportion of shared local community growth (Alternative B) or capture a higher proportion of shared local community growth (Alternative C) to be flawed. To assume that because Trust Lands represent a certain percentage of lands within a land office that those lands could be expected to capture that same (or greater) percentage of regional growth and development is too simplistic. The single largest factor driving development potential is location. Most community growth occurs on the most developable land, with developability being determined by proximity to urban areas, availability of community infrastructure and services, proximity to amenities, etc. The Trust Lands are allocated in a manner where they are most often not in the best location to be attractive for development. We understand that the REMB could acquire land with better location through land swaps and/or land banking. However, this would result in less valuable lands being disposed of to

acquire more valuable lands which will in turn result in a decrease Trust Land holdings and a decrease in the land area of each land office represented by Trust Lands (the estimates shown in Tables 2-8, 2-9, 2-11, 2-12, 2-14 and 2-15 would have to be adjusted accordingly). This concept is presented throughout the document. If this concept of "capture of proportional growth" is advanced, you should employ a much more sophisticated model that considers locational influences and presents a more realistic estimate of how much community growth could be expected on Trust Lands.

2. Section 2.3.1.5 – Land Use Categories (Page 2-9)

Throughout this section, the phrases "and other uses normally recognized by local zoning regulations" or "zoning designations" are used. You should note that many Montana cities and towns, and most Montana counties, do not have zoning regulations. These phrases imply that zoning is in place in all Montana communities.

3. Section 2.3.1.5 – Land Use Categories (Page 2-10)

This page contains a discussion of Transfer of Development Rights (TDR). First, the text should clarify whether the TDR sending and receiving areas would both be within the same land office. Second, the use of TDRs is very administratively intensive. We wonder whether REMB would have the requisite staff time and expertise to successfully implement a TDR program. Also, the use of TDRs in Montana has been very limited and has been successful only in a few specialized applications. TDR programs usually require zoning to determine development rights. Because most Montana counties lack countywide zoning, it would be very difficult to determine transferable development rights. Listing TDRs as a land use tool always sounds great, but you should research the practicality and viability of this tool before including it in this document.

4. Section 2.3.1.5 – Land Use Categories (Page 2-11)

Under the description of "Commercial" you should note that commercial uses might include some residential uses if these residential uses are considered commercial by the DOR.

5. Section 2.3.1.5 – Land Use Categories (Page 2-12)

Under the description of "Industrial" the phrase "growth policy or zoning designation, or identified as High Suitability" in the PEIS" is included. However, this same phase should also be included in the descriptions of "Residential" and "Commercial."

6. Figure 2-4 – Funnel Filter Process (Page 2-17)

We find that the Funnel Filter Process as presented is too general and simplistic. This could be problematic because REMB will seemingly be relying heavily on the funnel filter process to evaluate the development potential of Trust Lands. We would prefer to see inclusion in the document of detailed lists of factors and

objective criteria that will be used to evaluate a piece of Trust Land against a particular filter. The use of objective criteria for each filter would make the process more predictable for the REMB, local communities and the public.

7. Section 2.3.1.7 – Project Selection and Prioritization (Page 2-18)

We find that the Physical Environmental Filter to be somewhat lacking. There are many other environmental factors that should be considered in addition to 100-year floodplain and slope. We would recommend that land occupied by wetlands not be considered for development. In addition, land in the urban-wildland interface should not be available for residential development due to wildfire risk. The DNRC spends a considerable amount of taxpayer money each year fighting wildfires on state lands. Introducing residential uses to state lands will only increase taxpayer costs associated with protecting structures from wildfire.

8. Section 2.3.1.7 – Project Selection and Prioritization (Page 2-18)

Table 2-6 lists "Land Acreage for Rural Residential Uses by Suitability Ranking" and contains some pretty large numbers in terms of acreage for each land office. We have to wonder whether "rural residential" development is appropriate anywhere in Montana. While selling or leasing Trust Lands for rural residential uses may be profitable for the State, it could spell financial disaster for local communities. Local communities are responsible for providing public services such as road maintenance and fire protection. Cost of services studies (including some Montana-specific studies) show that rural residential development produces significantly less in tax revenue than it costs to provide services to this type of development. This type of development is fundamentally unsustainable, fiscally and environmentally, and should be discouraged.

9. Section 2.3.1.7 – Project Selection and Prioritization (Page 2-20)

The description of the Physical Suitability Filter seems to pertain primarily to access to infrastructure. We agree that proximity to infrastructure is important when evaluating project feasibility. We'd like to see mention of local facility plans added to this section; if Trust Lands are in close proximity to infrastructure but the local community does not plan to extend infrastructure towards the Trust Lands in their facility plans, that could be a problem. Finally, the financial aspects of infrastructure improvements should be mentioned. Will the REMB have funds available to pay for infrastructure improvements? If a sewer trunk main is ¼ mile away but no money is available to extend it to Trust Lands the sewer trunk might as well be 4 miles away! It should be made clear that local communities will not pay for these improvements. Also, will money be available to pay for special improvement districts, impact fees and/or paybacks for infrastructure?

10. Section 2.3.1.8 – Implementation Strategies (Page 2-23)

This section discusses transfer of development rights. Please refer to comment #3 above regarding TDR.

11. Section 2.3.1.10 – Administration (Page 2-25)

The section on Funding and Land Entitlements includes a list of "entitlements" that the REMB might pursue to increase the value of Trust Lands. We would add annexation to the list; if land is in close proximity to urban areas annexation can significantly increase the value of land. We would also note that "land use designations favorable to development" should also include the growth policy land use designation.

12. Section 2.3.1.12 – Environmental Review and Public Involvement (Page 2-26)

Under the section on Relationship to Local Land Use Regulations we would add annexation review. Although annexation laws are set forth at the state level, local communities are responsible for administering annexation laws.

13. Section 2.3.1.12 – Environmental Review and Public Involvement (Page 2-27)

The section on Relationship to MEPA contains the following sentence: "Where local subdivision or zoning ordinances do not address cultural resources (impacts on historic and archeological sites), the REMB would under MEPA and the Montana Antiquities Act, undertake an analysis of its proposed activities with regard to these resources." We interpret this sentence as meaning that REMB will not conduct an analysis of historic and archeological sites under MEPA and the Montana Antiquities Act if the local government requires this type of review in their local subdivision or zoning regulations. This seems to conflict with a sentence contained in Section 2.9.2.2 that states: "For example, site-specific socio-economic studies and cultural impact assessments required under the Montana Antiquities Act, would be undertaken for every qualifying project, regardless of whether the assessments are required locally." Which policy will be pursued? We'd prefer the latter.

Also, any policy to not require a MEPA analysis for information required by local regulations should always be tied primarily to local subdivision regulations. Again, it is very important to note that most Montana communities do not have zoning regulations and reliance upon local zoning to meet REMB MEPA obligations will be ineffectual.

14. Section 2.4 – Implementation of Preferred Alternative (Page 2-29)

The section refers to rural residential tracts as having a density of 1 dwelling unit per 25 acres or greater. This density seems somewhat arbitrary and we'd like to

see an explanation of why the 25 acre number was selected – why not 20 acres, 10 acres, 5 acres?

15. Section 2.6.1.8 – Financial Considerations (Page 2-36)

The section on Job Creation makes it sound like the development of Trust Lands will result in job creation. This conflicts with the statement in Section 2.6.2.8, Job Creation – "Since Trust Lands would only be sharing in the expected growth of a community; no new jobs would actually be created." The statement included in 2.6.2.8 is the correct one and should also be included in Section 2.6.1.8.

16. Section 2.6.2.9 – Environmental Review and Public Involvement (Page 2-43)

This section states "DNRC would follow model regulations formulated at the state level." Since the Department of Commerce, Community Technical Assistance Program was eliminated during the 2003 legislative session there is no one at the state level to formulate model regulations.

17. Section 2.6.4.5 – Implementation Strategies (Page 2-48)

The section on RFP Process lists several entitlements that could be pursued to enhance the value of Trust Lands. Again, this list should include annexation and growth policy amendments.

18. Section 2.7 – Description of Reasonably Foreseeable Future Actions Not Part of the Proposed Programmatic Plan But Related to Cumulative Effects (Page 2-51)

This section states: "Development on Trust Lands is expected to have negligible economic, environmental, and social impacts to the local communities since an assumption is made that Trust Lands would not be creating new development opportunities, but, instead, would be responding to accommodate the anticipated growth of a community." This statement is flawed. The amount of development is not the only factor that can create economic, environmental and social impacts; the type, location and timing of development are also very important. A 100-acre development within a city will have very different impacts than a 100-acre development 30 miles from the nearest town. Leapfrog development, or development of lands that are not ripe for development, can create negative financial impacts for local communities responsible for providing public services. Development of Trust Lands could impact both the location and timing of other developments, especially if street, sewer and/or water infrastructure is installed.

This statement is repeated throughout the document. It represents a very simplistic view of how development really occurs. It should not be included in the document unless additional information is included regarding the impacts that can result from the type, location and/or timing of development – not just the amount of development.

19. Section 2.9.2 – Objective 2 – Comply with the Montana Environmental Policy Act (MEPA) requirement for developing a programmatic plan, DNRC's administrative procedures regarding MEPA (ARM 36.2.537) and the Montana Antiquities Act (MCA 22-3-424), in their most current form (Page 2-55)

This section states: "However, these impacts would occur regardless of whether the development occurs on state lands or elsewhere in the community." Whether development has negative impacts is largely drive by the amount, type, location and timing of development. To assert that development of state lands will not have negative impacts, because the development would occur somewhere in the area regardless of whether it's on state lands or not, is too simplistic. The development of state lands could have significant impacts if the land is sensitive or characterized by development constraints. The development of 100 dwelling units on 100 acres on land characterized by wetlands and wildlife habitat that is 25 miles from town will have much different (and possibly greater!) impacts than the development of 100 dwelling units on 20 acres within a city.

20. Section 2.9.4.2 – Alternatives: Diversified Portfolio and B-1: Diversified Portfolio – Conservation Priority (Page 2-57)

This section states: "The Department would work closely with local government regulatory processes to facilitate a more simplified project level review." Seeking special treatment for the REMB would be unfair to other developers who are competing in the marketplace. It would be unethical for the REMB to seek special treatment and unethical for a local government to grant it. In addition, the REMB is relying upon the local review process to comply with MEPA requirements but at the same time will work to undermine the local review. This seems to be contradictory in spirit.

21. Section 2.9.4.3 – Alternative C: Focused Portfolio and C-1: Focused Portfolio – Conservation Priority (Page 2-57)

The section discusses the REMB striving for simultaneous and expedited review procedures. Please refer to comment 20 above.

22. Section 2.9.6 – Provide an opportunity for public involvement in decisions affecting residential, commercial, industrial and conservation uses (Page 2-58)

Some development of state land would involve only site development review, and not subdivision. However, the state should not rely upon local zoning review procedures to meet MEPA public involvement requirements. Many zoning reviews are administrative with no public hearing requirements. In addition, public hearings are not required for the first minor subdivision from a tract of record - 76-3-609(3), MCA.

23. Section 2.9.7.3 – Alternative C: Focused Portfolio and C-1: Focused Portfolio – Conservation Priority (Page 2-60)

This section contains the phrases "greatest flexibility in land use authorization" and "make every effort." From a local government point of view, the state needs to either commit to following local policies and regulatory processes or not. Please see comment #20 above.

24. Table 3-6 – Percentage of Trust Land Managed by REMB (Page 3-17)

There is an asterisk after "Development Lease Acres on Trust Lands" but no notation regarding what the asterisk means.

25. Section 3.2.4.2 – Real Estate Activities (Page 3-25)

This section again refers to TDRs as a land use tool. Please refer to comment #3 above.

In the section on "Leases," reference is made to full market value of the property. Please clarify whether full market value is based on developed or undeveloped ground.

26. Section 3.2.4.4 – Current Trends in Development (Page 3-30)

Bozeman's growth policy is known as the Bozeman 2020 Community Plan, not the 20/20 Plan.

27. Section 3.3.2.3 – Assumption for Current Uses (Page 3-53)

It should be noted that rooftops contribute to stormwater runoff along with paved/asphalt areas.

28. Section 3.3.2.4 – General Statewide Overview (Page 3-65)
The last sentence of this section does not make any sense.

29. Section 3.4.4.1 – Statewide Overview (Page 3-112)
Does "Montana Subdivision law" refer to the Montana Subdivision and Platting Act, the Montana Sanitation in Subdivisions Act, or both?

30. Section 3.4.4.2 – The Role of Community Infrastructure in the REMB Program (Page 3-112)
Add water systems to the list of infrastructure to be evaluated.

31. Section 4.1.2 – Growth Indices (Page 4-4)
Residential uses are described as being >1 acre and <26 acres. Please see comment #14 above.

32. Section 4.1.4 – Regulatory Requirements (Page 4-9, 4-10)
Add "and/or regulations" to the end of the first sentence.

In the following sentence: "In addition to local land use policy and regulatory requirements, activities conducted on Trust Lands will require compliance with a variety of other state regulations" add "and federal" after the word "state."

33. Section 4.2.1.2 – Cumulative Effects (Page 4-13)
This section states: "Development of commercial, residential, or industrial uses on Trust Lands would not necessarily stimulate or promote growth on other state (non Trust) lands." We disagree with this statement. Development on Trust Lands would likely impact the amount, timing and location of development on non-Trust Lands. Once infrastructure is installed to serve Trust Lands (roads, water, sewer, etc.) adjacent land would be more attractive for development. One of the greatest enticements for development is existing infrastructure.

34. Section 4.2.2.2 – Direct and Indirect Impacts (Page 4-15 and 4-16)
This section should include annexation as an example of an entitlement.

35. Section 4.2.5.2 – Direct and Indirect Impacts (Page 4-22), Section 4.2.6.2 – Direct and Indirect Impacts (Page 4-24), and Section 4.2.7.2 – Direct and Indirect Impacts (Page 4-28)

The last paragraph under Alternative A – Current Program, Industrial and Commercial Uses addresses local regulations for controlling sediment. You should not rely upon local zoning regulations to control sedimentation. As stated previously, many Montana communities do not have zoning regulations at all. Even if a community has zoning, sedimentation is often not adequately addressed. The City of Bozeman has a very robust regulatory program, but even we do not do much with sedimentation; we do not have a grading ordinance, which are popular in other more populous states.

36. Section 4.2.5.3 – Cumulative Effects (Page 4-23), Section 4.2.6.3 – Cumulative Effects (Page 4-26), Section 4.2.7.3 – Cumulative Impacts (Page 4-29), Section 4.2.8.3 Cumulative Effects (Page 4-32), Section 4.2.9.3 – Cumulative Effects (Page 4.34), Section 4.2.10.3 – Cumulative Effects (Page 4-37), Section 4.2.11.3 – Cumulative Effects (Page 4-40), Section 4.2.12.3 – Cumulative Effects (Page 4-43), Section 4.2.13.3 – Cumulative Effects (Page 4-45), Section 4.2.14.3 – Cumulative Effects (Page 4-48)

These sections state: "The alternatives would not create a demand for conversion of current land use to commercial, industrial, conservation or residential uses." While the development of Trust Lands may not impact the demand for the amount of land converted, it could significantly impact the type, location and timing of conversion from current uses to commercial, industrial, conservation or residential uses. Also see comment #18 above.

37. Section 4.2.6.2 – Direct and Indirect Impacts (Page 4-24)

Note that roofs contribute to impervious surfaces.

Note that a decrease in irrigation, as land is converted from agricultural uses to other uses, can significantly impact groundwater recharge.

Note that during development streams are often moved, piped, bridged, etc. which can all negatively impact water quality.

Note that residential development can negatively impact water quality due to lawn fertilizers and pesticides.

38. Section 4.2.7.2 – Direct and Indirect Impacts (Page 4-27)

Note that roofs contribute to impervious surfaces.

Note that during development streams are often moved, piped, bridged, etc. which can all negatively impact fisheries.

Note that residential development can negatively impact fisheries due to lawn fertilizers and pesticides.

Note that in residential development cutting vegetation back from riparian areas to enhance views can negatively impact fisheries.

39. Section 4.2.8.2 – Direct and Indirect Impacts (Page 4-30)

Note the introduction of domestic pets in residential areas can negatively impact wildlife.

40. Section 4.2.10.2 – Direct and Indirect Impacts (Page 4-35)

Note that even with conservation uses weed management is still important.

41. Section 4.2.10.2 – Direct and Indirect Impacts (Page 4-36)

The section under Alternative A – Current Program, Industrial and Commercial Uses discussed the use of local zoning regulations to address noxious weed control. First, local zoning regulations typically do not address noxious weeds. Weed control issues are usually addressed during subdivision. If no subdivision is being done, it is doubtful whether weed control would be addressed at all at the local level (whether there is local zoning in place or not).

Note that roofs contribute to the decrease of vegetative cover just like pavement and roads.

42. Section 4.2.12.2 – Direct and Indirect Impacts (Page 4-41) and Section 4.2.12.4 – Residential Adverse Effects (Page 4-43)

Most Montana communities do not have noise ordinances. Therefore, reliance upon local noise ordinances to address noise impacts is insufficient. What will happen in communities with no noise ordinance?

Note that barking dogs can also be a significant source of noise in residential areas.

43. Section 4.2.12.2 – Direct and Indirect Impacts (Page 4-42) and 4.2.12.3 – Cumulative Effects (Page 4-42)

The section on Residential Uses in Section 4.2.12.2 states: "Depending on the location of the selected trust tract, conversion to residential use may or may not result in noticeable change in noise levels." However, the first sentence in Section 4.2.12.3 states: "Implementation of any of the Alternatives would not result in an increased or additive impact (cumulative impact) to sensitive receptors as a result of changes in noise levels associated with designated land uses described above." There appears to be a conflict between these two statements.

44. Section 4.2.13.2 – Direct and Indirect Impacts (Page 4-43)

This section implies that aesthetics are only a consideration in non-urban areas. We greatly disagree. Aesthetic issues, such as viewshed preservation, are very important in urban areas. Many communities, including Bozeman, go to great lengths to address aesthetic aspects of development. It must be recognized that aesthetics involves more than preservation of the natural landscape. In urban areas, aesthetics relate to good urban design, excellence in architecture and landscape architecture, the provision of urban green spaces, preservation of viewsheds, etc. Please include a discussion of aesthetic considerations in urban areas.

Please note that light pollution can significantly impact aesthetics in both rural and urban areas.

45. Section 4.2.13.3 – Cumulative Effects (Page 4-45)

This section states: "Development of residential uses on Trust Lands may add to the visual changes evolving from urban-suburban sprawl ongoing in many areas of the state." The PEIS is basically admitting that residential development of Trust Lands could contribute to sprawl and the undesirable impacts of sprawl such as aesthetic impacts. We would like to know that the state will work to discourage sprawl on Trust Lands, or how the state will mitigate negative impacts

of sprawl it creates. The state comes out ahead by making more money while the local community suffers the financial, environmental and aesthetic impacts of sprawling development of Trust Lands.

46. Section 4.2.13.4 – Residual Adverse Effects (Page 4-45)

The second sentence should be rewritten as follows: "Compliance with local zoning (where applicable) and subdivision regulations, and incorporation of natural landscape retention in residential development design where required, would reduce residual effects from development." This change would recognize that all Montana communities are required to have subdivision regulations while many Montana communities do not have, and are not required to have, zoning regulations. This section assumes that local communities have "natural landscape retention" provisions in their local zoning and/or subdivision regulations. We believe this assumption to be incorrect. You would probably find that most local zoning and/or subdivision regulations do not have provisions regarding "natural landscape retention." If the local community does not have "natural landscape retention" regulations, what is the state proposing to do to ensure that aesthetics are maintained?

47. Section 4.2.15.1 – Statewide Overview (Page 4-50)

This section states: "Montana's land use statutes, particularly the Montana Subdivision and Annexation statutes require extension of services to support new development." First, does "Montana Subdivision statutes" refer to the Montana Subdivision and Platting Act and/or the Montana Sanitation in Subdivisions Act? Second, the use of the word "extension" seems to imply that municipal water and sewer must be extended to new subdivisions or annexations. This is simply not true. Subdivisions must be provided with water and sewer facilities, but these could be provided with on-site systems or community systems; they do not necessarily involve the "extension" of anything.

48. Section 4.2.16 – Taxation – Property Tax (Page 4-52)

This section implies that the development of Trust Lands would not negatively impact the financial health of local communities. We disagree. It is a well-known fact that rural residential development typically does not "pay its own way" when it comes to property taxes collected verses the cost of services provided. There are many costs of services of studies, including Montana-specific studies, which bear this out. Rural residential development typically produces a fraction of the funds in taxes that it costs the local community to provided the development with street maintenance, fire protection, etc.

49. Section 4.3.1 – Monitoring (Page 4-56)

State law requires that growth policies be reviewed and, if needed, revised every five years.

50. Chapter 4 – Environmental Consequences (Page 4-1 through 4-56)

We would like to see the inclusion of sections that address the following:

- The impact the development of Trust Lands would have on prime agricultural lands, agricultural uses, agricultural water facilities, and agricultural water users.

- The impact the development of Trust Lands would have on light pollution. You included a discussion of noise pollution, but light pollution is also a considerable problem.

- The impact the development of Trust Lands would have local services such as schools, libraries, parks, fire protection, police protection, solid waste disposal, etc.

51. Section 5.2.1.3 – Subdivision and Platting (Page 5-8)

A public hearing is not required for the first minor subdivision from a tract of record. The environmental assessment is not required for the first minor subdivision from a tract of record. Subdivisions totally within an area that has all of the following are exempt from the requirement of an environmental assessment:

- An adopted growth policy;
- Zoning regulations; and
- A strategy for the development, maintenance, and replacement of public infrastructure.

52. Table 5-2 – Item #1 (Page 5-9)

A public hearing is not required for the first minor subdivision from a tract of record. Public notification is not required for all zoning reviews. The City of Bozeman handles many zoning reviews administratively without public notice or a public hearing. How will the state provide public involvement if they are pursuing a review process with no public involvement requirement?

53. Table 5-3 – Item #4 (Page 5-10)

Although growth policies are required to include information regarding natural resources, the extent to which a growth policy addresses natural resources is at the full discretion of the governing body. Therefore, there is no guarantee that detailed information regarding geology and soil quality, stability and moisture will be available in a growth policy. Even when information is provided, it is often not detailed enough for site-specific evaluation.

The environmental assessment is not required for the first minor subdivision from a tract of record. Subdivisions totally within an area that has all of the following are exempt from the requirement of an environmental assessment:

- An adopted growth policy;
- Zoning regulations; and
- A strategy for the development, maintenance, and replacement of public infrastructure.

If there is no environmental assessment required, will the state still provide information to address geology and soil quality, stability and moisture impacts?

54. Table 5-3 – Item #5 (Page 5-10)

Although growth policies are required to include information natural resources, the extent to which a growth policy addresses water quality, quantify and distribution is at the full discretion of the governing body. Therefore, there is no guarantee that detailed information regarding water quality, quantify and distribution will be available in a growth policy. Even when information is provided, it is often not detailed enough for site-specific evaluation.

The environmental assessment is not required for the first minor subdivision from a tract of record. Subdivisions totally within an area that has all of the following are exempt from the requirement of an environmental assessment:

- An adopted growth policy;
- Zoning regulations; and
- A strategy for the development, maintenance, and replacement of public infrastructure.

We think you would find that most subdivision and/or zoning regulations do not collect detailed enough information to evaluate the items listed in Item #5. If local subdivision and/or zoning regulations do not collect detailed information to address these items will the state still provide information to address water quality, quantify and distribution?

55. Table 5-3 – Item #6 (Page 5-10)

Although growth policies are required to include information regarding natural resources, the extent to which a growth policy addresses air quality is at the full discretion of the governing body. Therefore, there is no guarantee that detailed information regarding air quality will be available in a growth policy. The City of Bozeman has a very detailed growth policy but it contains very little information regarding air quality.

The environmental assessment is not required for the first minor subdivision from a tract of record. Subdivisions totally within an area that has all of the following are exempt from the requirement of an environmental assessment:

- An adopted growth policy;
- Zoning regulations; and
- A strategy for the development, maintenance, and replacement of public infrastructure.

We think you would find that most subdivision and/or zoning regulations do not collect detailed enough information to evaluate the items listed in Item #6. The City of Bozeman has a very robust regulatory program but we do not collect information regarding air quality during project review. If local subdivision and/or zoning regulations do not collect detailed information to address these items will the state still provide information to address air quality?

56. Table 5-3 – Item #7 (Page 5-10)

Although growth policies are required to include information regarding natural resources, the extent to which a growth policy addresses vegetation cover, quantity and quality is at the full discretion of the governing body. Therefore, there is no guarantee that detailed information regarding vegetation cover, quantity and quality will be available in a growth policy. Even when information is provided, it is often not detailed enough for site-specific evaluation. The City

of Bozeman has a very detailed growth policy but it does not include information regarding vegetation cover, quantity and quality.

The environmental assessment is not required for the first minor subdivision from a tract of record. Subdivisions totally within an area that has all of the following are exempt from the requirement of an environmental assessment:

- An adopted growth policy;
- Zoning regulations; and
- A strategy for the development, maintenance, and replacement of public infrastructure.

We think you would find that most subdivision and/or zoning regulations do not collect detailed enough information to evaluate the items listed in Item #7. The City of Bozeman has a very robust regulatory program but we collect very little information regarding vegetation cover, quantity and quality during project review; it is certainly not detailed enough to evaluate the issues listed in Item #7. If local subdivision and/or zoning regulations do not collect detailed information to address these items will the state still provide information to address vegetation cover, quantity and quality?

57. Table 5-3 – Item #8 (Page 5-10) and Item #9 (Page 5-11)

Although growth policies are required to include information regarding natural resources, the extent to which a growth policy addresses terrestrial, avian and aquatic habitats is at the full discretion of the governing body. Therefore, there is no guarantee that detailed information regarding terrestrial, avian and aquatic habitats will be available in a growth policy. Even when information is provided, it is often not detailed enough for site-specific evaluation. The City of Bozeman has a very detailed growth policy but it does not include very detailed information regarding terrestrial, avian and aquatic habitats.

The environmental assessment is not required for the first minor subdivision from a tract of record. Subdivisions totally within an area that has all of the following are exempt from the requirement of an environmental assessment:

- An adopted growth policy;
- Zoning regulations; and

- A strategy for the development, maintenance, and replacement of public infrastructure.

We would be surprised in local governments requested that "appropriate agencies" review site-specific zoning proposals for impacts on terrestrial, avian and aquatic habitats. The City of Bozeman has very robust zoning requirements but we would typically not have "appropriate agencies" review site-specific zoning proposals for impacts on terrestrial, avian and aquatic habitats. If local subdivision and/or zoning regulations do not collect detailed information to address these items will the state still provide information to address terrestrial, avian and aquatic habitats?

58. Table 5-3 – Item #11 (Page 5-11)

We would be surprised if most local regulations required information sufficient in detail to address the issues listed in Item #11. If local subdivision and/or zoning regulations do not collect detailed information to address these items will the state still provide information to address aesthetics?

59. Table 5-3 – Item #12 (Page 5-11)

Although growth policies are required to include information regarding natural resources, the extent to which a growth policy addresses demands on environmental resources of land, water, air or energy is at the full discretion of the governing body. Therefore, there is no guarantee that detailed information regarding environmental resources of land, water, air or energy will be available in a growth policy. Even when information is provided, it is often not detailed enough for site-specific evaluation. The City of Bozeman has a very detailed growth policy but it does not include information regarding environmental resources of land, water, air or energy. If local growth policies do not contain detailed information to address these items will the state still provide information to address environmental resources of land, water, air or energy?

60. Table 5-4 – Item #16 (Page 5-12)

The City of Bozeman does not collect the following information during subdivision or zoning review: the number and type of employees, wages and where employees would come from. Therefore, we do not collect any information that would allow us to answer the questions listed in Item #16. We would be surprised if any zoning or subdivision regulations in the state collected this type of information. If local subdivision and/or zoning regulations do not collect detailed information to address these items will the state still provide information to address the quantity and distribution of employment?

61. Table 5-4 – Item #17 (Page 5-12)

Growth policies are not required to contain information regarding the local and state tax base and tax revenues, and we would be very surprised in any growth policies contain this information. The City of Bozeman has a very detailed growth policy but it does not contain this type of information. We do not conduct analysis of project impacts on the local tax base during zoning or subdivision review. We would be surprised if any Montana communities prepared this type of analysis during zoning or subdivision review.

62. Table 5-4 – Item #22 (Page 5-12)

Not all zoning reviews require public notification and opportunities to comment.

Generally, we find that the state would be relying entirely too much on local government to collect information needed to address MEPA requirements. Most local regulations are simply not going to collect all of the information required to sufficiently meet MEPA requirements.

We also found many typographical errors, which we have noted in the document. If you would like, we can send our redlined document to you to aid in editing.

RECEIVED
JUL 16 2004
D.N.R.C.

DNRC
PO Box 201601
Helena, MT 59620-1601

To Whom It May Concern:

I am writing to express my opinion with regard to the public comment period for State Land use.

As a co-owner of a state-lease property on Echo Lake, my first preference would be an option to buy this property outright from the state at fair market value. I know that the state has sold some of their lakefront leases around Holter Reservoir, and we would be most interested in purchasing this property if possible.

Otherwise, we favor the "Status pro" option. We have given some consideration to retirement at this property, but it isn't a remote possibility if the lease may expire or if the lease rates continue to jump at 100% increments.

Thank you for the opportunity to give our input into this issue. We feel that if the state wisely invested the funds from the sale of some of their more unique properties, they will no longer have the expense of managing them year-to-year and the benefit to the school system may well exceed the current benefits. Please let us know if there is any consideration being given to selling selected parcels as one of the possible options.

Debra & Joe Bowers
2113 Hwy 206
Columbia Falls, MT 59912
bowers@bigsky.net
(406) 892-4910

August 18, 2004

Real Estate Management Programmatic EIS Team
DNRC
P.O. Box 201601
Helena, MT 59620-1601

Please accept the following comments on the Draft Real Estate Management Programmatic Environmental Impact Statement on behalf of the Alliance for the Wild Rockies. We believe that this EIS is vague and lacking meaningful analysis of the impacts of each alternative.

DNRC does not have a mechanism for tracking costs, including market research, etc. To implement four of the five alternatives will require a larger budget for DNRC and more full time employees yet costs will merely be estimated. DNRC must track the costs to implement any of its programs on trust lands in order to determine whether it is really providing more revenue to the school trust or merely taking money from the taxpayers and funneling it back to the school trust. The Land Board and DNRC have a fiduciary responsibility to the school trust, estimating rather than tracking costs does not fulfill this trust duty. It appears that DNRC is attempting to increase the size of DNRC rather than fulfilling its fiduciary responsibility to the school trust.

The presumption in this plan that DNRC needs "to generate increased and diversified revenues from alternative management strategies" is a departure from the Trust land Management Division's existing mission statement which states, "Manage the State of Montana's trust land resources to produce revenues for the trust beneficiaries while considering environmental factors and protecting the future income generating capacity of the land." This change gives short-term gains priority over protecting the long-term trust assets. The premise of the school trust is a land-based ethic whereas the premise of the Plan is a transition from this land ethic to a strictly short term monetary return. That refuses to account for costs. DNRC is practicing Enron style economics. Any good manager would want to know what the costs are instead of only the revenue.

The DEIS failed to disclose where lands were located that would be considered for development. There was no mapped inventory of lands that would come under Special Uses or their current use (i.e., timberlands, grazing, etc.) Lists of acreage amounts in each land office is not sufficient and does not provide the reader or Land Board with the information necessary to assess the effects or make an informed decision.

Furthermore, the DEIS fails to disclose what lands are currently included in the timber lands being analyzed in the Sustained Yield Study and how changing the use for those lands will affect meeting the sustained yield target on a shrinking land base. The DEIS at page 3-47 dismisses this issue by merely stating that it will have a minimal

effect on the sustained yield and it will be dealt with when the sustained yield is updated in 10 years. This is unacceptable. The sustained yield is a target for timber extraction that DNRC believes it must meet every year. If timberlands are converted to other uses that means that more logging must occur on less acreage than was analyzed in the sustained yield study. This has an effect on wildlife habitat, water quality, fish, old-growth forests, big game, hunting and fishing opportunities and other recreation that was completely ignored in the DEIS.

Regarding access on page 3-47 the DEIS states: "When timber management remains the predominant use, SFLMP direction would prevail, unless a secondary use provides for funding and adequate analysis to warrant a different standard. When Programmatic EIS uses are predominant, Programmatic EIS direction or specifications in the document authorizing use would prevail." However, the Programmatic EIS provides no direction for access nor does there appear to be a mechanism to determine how timber use will be superceded by another use.

The DEIS proposes to use a funnel filter approach to determining whether other uses will replace existing uses. However, the funnel filter as outlined on page 2-18 has no biological filter so it fails to determine whether an area should remain undeveloped due to presence of threatened, endangered or sensitive species, old-growth forest habitat, wetlands, heron rookeries, nesting areas, native fish habitat, and other biological factors. By not having a biological filter DNRC fails to comply with other state laws and the Montana Constitution.

The impacts of sprawl are not disclosed or analyzed. It appears that DNRC will be reacting to perceived market conditions and will proceed with development without consideration as to how development on their land is contributing to sprawl, unplanned development and private land valuation.

There is no provision for limiting sprawl or preserving open space.

There appears to be no mechanism for resolving conflicts between uses.

The overall premise of the DEIS is that this program will increase funding to schools. This is flawed because the legislature controls school funding so any increased return from school trust lands will primarily reduce the tax burden of all public services in the state rather than provide additional support for public education. (Montana's State Forests, Schools and Quality of Life: An Economic Analysis, Thomas Michael Power, 1996)

There does not appear to be a provision to adopt a strict, independent appraisal system to objectively determine full market value. DNRC in-house appraisals could reflect a bias of the agency towards converting lands to special uses in reaction to short-term market conditions.

The DEIS does not disclose how it relates to the Land Banking rules that are undergoing public review concurrently with this EIS.

There appears to be no link to existing commitments like the Swan Valley Conservation Agreement or the State Forest Land Management Plan. It's as if these legally binding documents no longer exist for purposes of land transfer, new lease or sale.

While the DEIS lays out a procedure for the Habitat Conservation Plan's Relationship to Transitional Lands it is premature to rely on this. The HCP has not been released in draft form yet nor has the public been given an opportunity to review it and provide the DNRC and USFWS with comments. At this time how the HCP will deal with land sales is purely speculative and predecisional.

The DEIS does not adequately analyze or disclose the impacts to many natural resources such as soils, water quality, fish, wildlife, etc. Almost the entire DEIS analysis is a cut and paste job with the same redundant statements for every resource listed: 1) there will be no increased or additive impacts (cumulative impact), 2) implementation of any of the alternatives would not result in an irreversible or irretrievable commitment of resources and 3) short-term impacts are not expected to impact long-term productivity. This is not an environmental analysis and fails to meet the minimum requirements of MEPA. If an area is paved and developed of course there are going to be impacts to soils, productivity, wildlife, etc. For DNRC to state that there will not be impacts is totally unbelievable, irresponsible and illegal.

We do not believe that the issues we raised in our scoping comments were addressed in the DEIS. In fact we saw no response to any of the comments that were printed in Appendix A. This is a violation of MEPA.

Thank you for your time.

Sincerely,

Michael T. Garrity

Michael Garrity
Executive Director
Alliance for the Wild Rockies
P.O. Box 505
Helena MT 59624

RECEIVED
JUL 16 2004
D.N.R.C.

DNRC
PO Box 201601
Helena, MT 59620-1601

To Whom It May Concern:

I am writing to express my opinion with regard to the public comment period for State Land use.

As a co-owner of a state-lease property on Echo Lake, my first preference would be an option to buy this property outright from the state at fair market value. I know that the state has sold some of their lakefront leases around Holter Reservoir, and we would be most interested in purchasing this property if possible.

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Thank you for the opportunity to give our input into this issue. We feel that if the state wisely invested the funds from the sale of some of their more unique properties, they will no longer have the expense of managing them year-to-year and the benefit to the school system may well exceed the current benefits. Please let us know if there is any consideration being given to selling selected parcels as one of the possible options.

Debra & Joe Bowers
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Columbia Falls, MT 59912
bowers@bigsky.net
(406) 892-4910

CASCADE COUNTY

BOARD OF COMMISSIONERS
325 2nd Avenue North
Great Falls, MT 59401
Tel. (406) 454-6810
Fax: (406) 454-6345
commission@co.cascade.mt.us
www.co.cascade.mt.us

August 18, 2004

Ms. Jeanne Holmgren, Bureau Chief
Real Estate Management Bureau
Montana Department of Natural Resources and Conservation
P.O. Box 201601
Helena, MT 59620-1601

RE: Draft Programmatic Environmental Impact Statement
Real Estate Management Plan

Dear Ms. Holmgren:

Thank you for this opportunity to comment on the referenced draft EIS document, regarding alternative strategies for the management of state Trust Lands. It is our understanding the preferred alternative will become the Real Estate Management Bureau's, "Real Estate Management Plan" for the next 20 years.

We agree with a number of the points and issues spelled out in the draft document. Specifically, it appears the REMB is facing a number of new challenges for generating revenue from real estate activities on Trust Lands, especially those related to residential, commercial, and industrial land uses. With our changing economic environment in the State of Montana, opportunities now exist to generate even greater income. With the REMB currently managing land uses in a reactive manner without the benefit of a well-defined planning process or decision making framework, the ability to take full advantage of these opportunities is limited. Additionally, we agree that the REMB lacks a methodology for determining the suitability of land for the development of the various uses under its jurisdiction and consequently limits it ability to take full advantage of unique opportunities. In order for REMB to be able to establish a successful real estate program, it will need to rely on a close association with local land use planning and regulatory processes. The REMB has come of age to step out and be more proactive in its management of state Trust Lands. Local forces are in place, from both the public and private sectors, which are applying strong pressures and influences upon the REMB to pursue the highest and best uses for state Trust Lands. The REMB and Land Board need to have the tools, resources and authority to more appropriately and skillfully manage lands of its responsibility.

During our review of the draft EIS document, it was reassuring to learn that all five of the land management strategies under consideration are structured to closely adhere to local land development review processes. It was also interesting to learn that while the greatest amount of Trust Land revenue is generated from agriculture and grazing activities, the net return per acre on these types of uses is the lowest. And that, the highest net return per acre is actually from non-resource based activities, including residential, commercial, and industrial uses, which comprise less than one percent of the Trust Land base.

Based on our review of the five alternative management strategies, as well as our overall interest to see the REMB be more proactive in its marketing of state Trust Lands, especially from non-resource based activities (residential, commercial and industrial uses), we urge that Alternative C be selected as the preferred strategy.

We support this preferred strategy because of its positive impact on urban and suburban planning and in solving problems particular to our area. Specifically, this strategy could help to address what we feel to be a unique situation in Cascade County or, at least, may not be common in other areas of Montana. This is where new residential and commercial projects are being blocked by large, adjoining tracts of Trust Land. This configuration prevents the development of higher density residential and commercial projects in the immediate area of the Trust Land and prevents the extension of community services through, adjacent to and beyond the tract of Trust Land. Consequently, this promotes and forces development activities to "leap" beyond the Trust Lands, which further contribute to the undermining of local land use regulations and growth policies, as well as create lower density developments and smaller tax bases, which do not sufficiently generate the level of tax revenues needed by local governments to fund the public services, roadways, and facilities demanded by these lower density developments. An example is the tract of Trust Land located along the east side of Fox Farm Road and immediately south of the Great Falls city limits.

In summary, we fully commend the Department of Natural Resources and Conservation for its foresight in studying alternative land management strategies. Further, we wholeheartedly support the development and implementation of Alternative C.

Thank you in advance for your careful consideration of our comments while preparing and adopting a final Real Estate Management Plan.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
OF CASCADE COUNTY

Peggy J. Beltrone, Chairman

Tom Stelling, Commissioner

Lance Olson, Commissioner

FRIENDS OF THE WILD SWAN
P.O. BOX 5103
SWAN LAKE, MT 59911

August 17, 2004

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AUG 1 9 2004
D.N.R.C.

Real Estate Management Programmatic EIS Team
DNRC
P.O. Box 201601
Helena, MT 59620-1601

Please accept the following comments on the Draft Real Estate Management Programmatic Environmental Impact Statement on behalf of Friends of the Wild Swan. While we understand that a programmatic EIS must cover many issues over a large area we found this EIS to be overly vague and lacking meaningful analysis of the impacts of each alternative.

• The DEIS failed to disclose where lands were located that would be considered for development. There was no mapped inventory of lands that would come under Special Uses or their current use (i.e., timberlands, grazing, etc.) Lists of acreage amounts in each land office is not sufficient and does not provide the reader or Land Board with the information necessary to assess the effects or make an informed decision.

Furthermore, the DEIS fails to disclose what lands are currently included in the timber lands being analyzed in the Sustained Yield Study and how changing the use for those lands will affect meeting the sustained yield target on a shrinking land base. The DEIS at page 3-47 dismisses this issue by merely stating that it will have a minimal effect on the sustained yield and it will be dealt with when the sustained yield is updated in 10 years. This is unacceptable. The sustained yield is a target for timber extraction that DNRC believes it must meet every year. If timberlands are converted to other uses that means that more logging must occur on less acreage than was analyzed in the sustained yield study. This has an effect on wildlife habitat, water quality, fish, old-growth forests, big game, hunting and fishing opportunities and other recreation that was completely ignored in the DEIS.

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• There is no provision for limiting sprawl or preserving open space.

• There appears to be no mechanism for resolving conflicts between uses.

• There does not appear to be a mechanism for tracking costs, including market research, etc. To implement four of the five alternatives will require a larger budget for DNRC and more full time employees yet costs will merely be estimated. DNRC must track the costs to implement any of its programs on trust lands in order to determine whether it is really providing more revenue to the school trust or merely taking money from the taxpayers and funneling it back to the school trust. The DNRC has a fiduciary responsibility to the school trust, estimating rather than tracking costs does not fulfill this trust duty.

• The presumption in this plan that DNRC needs "to generate increased and diversified revenues from alternative management strategies" is a departure from the Trust land Management Division's existing mission statement which states, "Manage the State of Montana's trust land resources to produce revenues for the trust beneficiaries while considering environmental factors and protecting the future income generating capacity of the land." This change gives short-term gains priority over protecting the long-term trust assets. The premise of the school trust is a land-based ethic whereas the premise of the Plan is a transition from this land ethic to a strictly monetary return.

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We do not believe that the issues we raised in our scoping comments were addressed in the DEIS. In fact we saw no response to any of the comments that were printed in Appendix A.

Sincerely,

Arlene Montgomery

Arlene Montgomery
Program Director

MONTANA ENVIRONMENTAL INFORMATION CENTER

"Working to Protect and Restore Montana's Natural Environment Since 1973"

Via Facsimile

To: Trust Land Management Division of the Montana Department of Natural Resources and Conservation.

From: James D. Jensen, Executive Director, MEIC.

Date: August 20, 2004

RE: Comments on the Draft Real Estate Management Programmatic Environmental Impact Statement.

MEIC would like to join in the comments submitted by the Montana Smart Growth Coalition and does so by reference.

In particular, MEIC agrees that the DPEIS fails to include the criteria and direction necessary to optimize the long-term revenue generation for trust beneficiaries and concomitantly protect Montana's environment and taxpayers from adverse and cumulative impacts that real estate and development decisions on state trust lands could have - regardless of which of the proposed alternatives is selected as the preferred alternative.

The DPEIS is based on the false assumption that a large percentage of school trust lands should be made available for either commercial leases or for sprawling rural subdivisions - regardless of the impact that the development will have on local infrastructure, on the efficient and attractive future growth of communities, on the health of downtown areas, or on the environment."

The DPEIS as written would lead to reactive management that would neither maximize the long term revenues of the trust lands nor lead to attractive and efficient development.

P.O. Box 1184 • Helena, MT 59624 • Phone: (406) 443-2520 • Fax: (406) 443-2507 • E-mail: meic@meic.org • www.meic.org

Standard Comment Form COMMENTS DUE BY AUGUST 20, 2004
Draft Real Estate Programmatic EIS

Date: 7-17-04 Name: John L Owen Address: 1728 LaBrant Rd. City/Zip: Bigfork 59911

Please try to provide specific comments

General Comments: I'm A homeowner on Lot #29 Echo Lake Retired And wanting To purchase this Lot, As I'm A permanate resident year around. Please consider my proposal.

Chapter 1:

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JUL 2 0 2004
D.N.R.C.

Chapter 2:

Chapter 3:

Chapter 4:

Chapter 5:

Note: You may choose to provide written comments in any desired format. This form is only provided for convenience. All written comments must be directed to: Real Estate Management Programmatic EIS Team, Department of Natural Resources and Conservation, P.O. Box 201601,Helena, MT 59620 - 1601

Handout for Public Meetings, July 2004

Swan View Coalition

"People Helping People Help the Earth"

3165 Foothill Road, Kalispell, MT 59901

406-755-1379 www.swanview.org

August 14, 2004

Real Estate Management Programmatic EIS Team
DNRC
PO Box 201601
Helena, MT 59620-1601

Dear Folks at DNRC;

Please accept for the record the following comments on your Draft Real Estate Management Programmatic Environmental Impact Statement.

We find the proposal to sell or otherwise dispose of Trust Lands to be at odds with the mission of the TLMD: "to produce revenues for the Trust beneficiaries while considering environmental factors and protecting the future income-generating capacity of the land." Similarly, we find the proposal to sell or otherwise dispose of Trust Lands to be at odds with the MCA requirement: "The greatest monetary return must be weighed against the long-term productivity of the land to ensure continued future returns to the trusts."

The real estate market has improved largely because people have lost faith in the reliability of the stock market, choosing to instead invest in more reliable real estate. DNCR, on the contrary, intends to do the opposite by selling Trust Lands and perhaps investing the revenue in the unreliable stock market. This fails to insure long-term revenue from Trust Lands, fails to protect the future income-generating capacity of the land, and fails to protect the long-term productivity of the land. Once it is sold, it is gone along the with ability to raise revenue from it.

There is a simple saying that sums up the Trust responsibility to pass this Trust along to our children: Montana Trust Land - pass it on. Selling Trust Lands is nothing more than short-term gain at the expense of our children's future.

We find the DPEIS Summary Comparison of Effects to be essentially worthless. The "plus" signs give no clear indication of whether the "elevated and relative impact" is in the end positive or negative. Our faith is further eroded when we read how negative effects of the action alternatives are continually and essentially discounted to zero or near zero. How can a substantial acreage of Trust Lands be sold for development at the whim of the new owner without consequent considerable

adverse effects to, for instance, water quality? The roads, parking lots, excavation, water development, sewers, use of pesticides and fertilizers, etc. that normally accompany development all have adverse effects on water quality, even when done in the best manner possible. Similarly, it is ludicrous to state that the selling of Trust Lands and their subsequent development will have no change in effects on community infrastructure, culture, aesthetics, and fisheries.

We urge DNRC in the strongest of terms to not sell Trust Lands and to go back to the drawing board in its assessment of the effects of its proposed alternatives that would do so. An adequate analysis of effects would point clearly toward the wisdom of retaining these lands in the public Trust.

Think long-term and avoid the rush to sell land when others are rushing to buy land because it is a more reliable investment than the stock market.

Montana Trust Land - pass it on!

Thank you for this opportunity to comment.

Sincerely,

Keith J. Hammer
Chair